

Court File No. CV-20-00644927-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

- and -

YORKVILLE CENTRAL INVESTMENTS INC., YORKVILLE CENTRAL 2 INVESTMENTS
INC., YORKVILLE CENTRAL 3 INVESTMENTS INC.

Respondents

**SECOND REPORT OF THE RECEIVER OF
110 AVENUE ROAD, TORONTO, 112 AVENUE ROAD, TORONTO,
114 AVENUE ROAD, TORONTO AND 116 AVENUE ROAD, TORONTO**

October 9, 2020

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I. INTRODUCTION

1. Pursuant to an application (the “**Application**”) made by Cameron Stephens Mortgage Capital Ltd. (“**Cameron Stephens**”), by Order of the Ontario Superior Court of Justice (the “**Court**”) dated September 11, 2020 (the “**Appointment Order**”), RSM Canada Limited (“**RSM**” or the “**Receiver**”) was appointed as receiver and manager over the Properties (defined below) A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. Immediately following the granting of the Appointment Order, the Honourable Justice Dietrich began hearing SC Land Inc.’s (“**SC Land**”) motion for an order directing the Receiver to enter into an Agreement of Purchase and Sale with SC Land for the sale of the Properties (the “**Proposed Agreement**”) pursuant to the terms set out in the motion (the “**SC Motion**”). A copy of the SC Motion, without appendices, was attached as Appendix “B” to the First Report.
3. The Receiver did not take any position on the SC Motion.
4. After hearing argument on the SC Motion, the Honourable Justice Dietrich adjourned the SC Motion to October 5, 2020 to allow the Receiver time to, among other things, attempt to ascertain the market value of the Properties, consider the Proposed Agreement, and prepare a report relating to the marketing of the Properties. A copy of Justice Dietrich’s endorsement (the “**September 11 Endorsement**”) is attached hereto as **Appendix “B”**.
5. With reference to the September 11 Endorsement, the Receiver filed the First Report of the Receiver dated September 25, 2020 (the “**First Report**”) and the Supplemental Report to the First Report dated October 2, 2020 (the “**First**

Supplemental Report”). Copies of the First Report, without appendices, and the First Supplemental Report are attached hereto as **Appendix “C”** and **Appendix “D”**, respectively.

6. On October 5, 2020, the Honourable Justice Conway heard the SC Motion. In her Endorsement issued that day (the **“October 5 Endorsement”**), Justice Conway, *inter alia*, directed the Receiver to return to Court on October 14, 2020 to seek Court approval of a stalking horse sales process to enable the Receiver and the Court to determine if there is interest for the Properties at a higher price than the purchase price offered by SC Land. A copy of the October 5 Endorsement is attached hereto as **Appendix “E”**.
7. The Appointment Order, the September 11 Endorsement and the October 5 Endorsement and other court documents (other than those documents that contain information that have been sealed) have been posted on the Receiver’s website, which can be found at rsmcanada.com/avenue-road-properties.
8. The Receiver has retained the firm of Paliare Roland Rosenberg Rothstein LLP to act as the Receiver’s independent legal counsel.
9. The Receiver has retained the firm of Garfinkle Biderman LLP (**“Garfinkle”**), as real estate counsel, to assist with the sale of the Properties. Garfinkle is also acting as Cameron Stephens’ counsel.

II. PURPOSE OF REPORT

10. The purpose of this second report to the Court (the **“Second Report”**) is to:
 - (a) report to the Court on the activities of the Receiver since the date of the First Report to October 8, 2020;

- (b) provide the Court with information on the Receiver's proposed sale process (the "**Sale Procedure**") for the sale of the Properties;
- (c) provide the Court with information on the Stalking Horse Agreement (defined later herein); and
- (d) seek an order:
 - (i) approving the Sale Procedure and authorizing the Receiver to conduct the Sale Procedure;
 - (ii) authorizing the Receiver to enter into a listing agreement with Colliers International ("**Colliers**");
 - (iii) authorizing the Receiver to enter into the Stalking Horse Agreement;
 - (iv) sealing Confidential Appendix "H" to the Second Report and the Listing Agreement (defined later herein) once filed; and
 - (v) approving the Second Report and the Receiver's conduct and activities described therein.

Terms of Reference

11. In preparing this report and making the comments herein, the Receiver has relied upon certain information from third-party sources (collectively, the "**Information**"). The Receiver has, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

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12. Unless otherwise stated, all dollar amounts contained in the Second Report are expressed in Canadian dollars.
 13. Defined terms in the Second Report have, unless indicated otherwise herein, the same meanings as set out in the First Report and the First Supplemental Report.

III. BACKGROUND

14. The Properties consist of land and premises described as follows:
 - a) 110 Avenue Road, Toronto (“**110**”) is a converted Victorian house containing commercial and residential rental units. 110 is owned by Yorkville Central 3 Investments Inc. (“**Yorkville Central 3**”);
 - b) 112 Avenue Road, Toronto (“**112**”) is a converted Victorian house containing one commercial unit. 112 is owned by Yorkville Central 3;
 - c) 114 Avenue Road, Toronto (“**114**”) is a Victorian house that is currently vacant and has undergone a partial demolition. 114 is owned by Yorkville Central 2 Investments Inc.; and
 - d) 116 Avenue Road, Toronto (“**116**”) is a vacant piece of land. 116 is owned by Yorkville Central Investments Inc.
15. Cameron Stephens is the registered holder of a first mortgage against the Properties.
16. The Debtors were in default of the mortgage and Cameron Stephens sought the appointment of the Receiver pursuant to a Notice of Application dated August 5, 2020.
17. On September 11, 2020, the Court issued the Appointment Order.

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18. As at September 1, 2020, the Debtors' indebtedness to Cameron Stephens was \$12,457,570. The Receiver has not to date sought an independent legal opinion on the mortgage held by Cameron Stephens.
 19. GC Capital Inc. ("**GC**") holds a second mortgage on the Properties. As at August 31, 2020, the Debtors' indebtedness to GC was \$2,635,417. The Receiver has not to date sought an independent legal opinion on the mortgage held by GC.

IV. PROPOSED SALE PROCESS

20. In accordance with the October 5 Endorsement, the Receiver has prepared a marketing process for the Properties, and is seeking the Court's approval of the sale procedure described in the following paragraphs (the "**Sale Procedure**").
21. The Sale Procedure contemplates the marketing of the Properties by Colliers. In order to set a floor price for the purchase of the Properties, SC Land submitted a stalking horse offer (the "**Stalking Horse Offer**"). The Receiver is seeking an Order of the Court authorizing the Receiver to accept the Stalking Horse Offer (once accepted, the "**Stalking Horse Agreement**"). The Stalking Horse Agreement is described below.

V. THE STALKING HORSE AGREEMENT

22. The Stalking Horse Agreement is an offer of \$16,100,000 by SC Land (the "**Purchaser**" or the "**Stalking Horse Bidder**") to purchase the Subject Assets (as defined in the Stalking Horse Agreement) including, in particular, the Properties (the "**Stalking Horse Bid**").

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23. Capitalized terms used in this section of the Second Report are as defined in the Stalking Horse Agreement unless otherwise defined. A copy of the Stalking Horse Agreement is attached hereto as **Appendix “F”**.
24. As set out below, the salient terms of the Stalking Horse Agreement are:
- i) Purchase Price for the Properties - \$16,100,000 (the “**Stalking Horse Price**”);
 - ii) Deposit - \$1,000,000;
 - iii) Expense Reimbursement - \$385,000 if the Stalking Horse Bidder is not the Successful Bidder;
 - iv) All applicable taxes and registration fees, including land transfer taxes, are to be paid by the Purchaser on closing;
 - v) Closing Date – 10 business days following issuance of the Vesting Order or such other date as may be agreed upon by the Parties; and
 - vi) Outside Date – January 31, 2021, representing the date that the Stalking Horse Agreement terminates if a sale is not completed pursuant to that agreement.
25. The Stalking Horse Agreement has no due diligence conditions and provides for an expense reimbursement of \$385,000 (the “**Expense Reimbursement**”), in the event the Purchaser is not the Successful Bidder. The Expense Reimbursement is intended to reimburse the Purchaser for its expenses and time incurred in connection with the Transaction.
26. It is the Receiver’s view that the Expense Reimbursement is a fair and reasonable amount having regard to the nature of the Transaction and market practice. The

Receiver supports the Expense Reimbursement because the Stalking Horse Agreement brings the enhanced certainty of a “floor price” to the Sale Procedure. This, in turn, provides a degree of assurance to Cameron Stephens and GC that there will be a sale of the Properties regardless of the outcome of the Sale Procedure.

27. The Sale Procedure, described below, is intended to provide a fair and transparent marketing process that will allow the Receiver an opportunity to ascertain if there is the possibility of enhancing realizations from the Properties over and above the Stalking Horse Price.

VI. THE SALE PROCEDURE

28. Capitalized terms used in this section of this Report are as defined in the Sale Procedure that is attached hereto as **Appendix “G”**, unless otherwise defined.
29. The Receiver seeks approval to implement the Sale Procedure that, if approved, will set the parameters of the sales and marketing process pursuant to which the Receiver will seek offers superior to the Stalking Horse Agreement for the Properties, and will set out the requirements for the submission of offers by Interested Parties.
30. The Sale Procedure contemplates that Interested Parties will be required to meet the preliminary participant requirements set out therein, being the execution of (i) a Confidentiality Agreement; and (ii) an Acknowledgement of Sale Procedure. Thereafter, the Interested Party will be given access to confidential information in the Confidential Data Room.

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31. The Sale Procedure provides that a Bid must be submitted by the Bid Deadline of 3:00 p.m. (Toronto Time) on November 24, 2020.
 32. In order for a Bid to be a Qualified Bid, the Bid must be for a purchase price equal to the sum of (i) the Stalking Horse Price; plus (ii) the Expense Reimbursement of \$385,000; plus (iii) \$125,000. The additional amount of \$125,000 reflects certain costs that will be incurred if a Bidder other than the Stalking Horse Bidder, is the Successful Bidder.
 33. In addition to the price, in order to be a Qualified Bid, a Bid must:
 - a) include a binding offer in the form of an executed mark up of the Vendor's form of the agreement of purchase and sale attached as Schedule "B" to the Sale Procedure;
 - b) be irrevocable until the date on which the Receiver obtains Court approval of the Successful Bid;
 - c) not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence;
 - d) be accompanied by written evidence of a commitment for financing or other evidence of the ability to consummate the transaction satisfactory to the Receiver;
 - e) not request or entitle the Qualified Bidder to any break fee, expense reimbursement or similar type of payment; and
 - f) be accompanied by a Good Faith Deposit in the amount of \$1,000,000.

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34. Following the Bid Deadline, the Receiver will determine which Bidders are Qualified Bidders and will notify each Bidder of the Receiver's determination as to whether the Bidder is a Qualified Bidder as soon as practicable.
 35. The Stalking Horse Bidder is and is deemed to be a Qualified Bidder for purposes of the Sale Procedure.
 36. If the Receiver determines that there is no Qualified Bid other than the Stalking Horse Bid following the Bid Deadline, the Sale Procedure will be terminated. In that event, the Stalking Horse Bid will be declared the Successful Bid and the Receiver will seek Court approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein, and obtain a vesting order to transfer title to the Properties to the Stalking Horse Bidder.
 37. As set out above, the minimum purchase price of any Qualified Bid must be the sum of the Purchase Price (as defined in the Stalking Horse Agreement) plus the Expense Reimbursement of \$385,000 plus \$125,000.
 38. If one or more Qualified Bids (in addition to the Stalking Horse Bid) is received by the Bid Deadline, the Receiver will by December 4, 2020 (i) conduct an auction amongst the Qualified Bidders (including the Stalking Horse Bidder), on terms to be determined by the Receiver and/or (ii) otherwise negotiate with the Qualified Bidders to determine the Successful Bid and the Back-up Bid, if any.
 39. The Receiver notes that if Qualified Bid(s) are sufficiently greater than the Stalking Horse Bid, in the course of negotiating with the Qualified Bidders and/or conducting an auction, and its determination of the Successful Bid, the Receiver will take into consideration that any Bid will need to exceed any offer submitted

by SC Land by \$385,000, representing the Expense Reimbursement to be paid to SC Land as a result of the non-completion of the Stalking Horse Agreement.

40. Following the determination of the Successful Bid, the Receiver will seek Court approval of, and authority to consummate, the Successful Bid and the transactions provided for therein.
41. The Sale Procedure will be posted to the Receiver's website. Any potential interested party that contacts the Receiver or Colliers will be invited to participate in the Sale Procedure.
42. In the Receiver's view, the Sale Procedure:
 - (a) is consistent with market practice;
 - (b) provides a reasonable opportunity for competing bidders to submit offers superior to the Stalking Horse Agreement;
 - (c) enables the Receiver to determine whether there is the possibility for enhanced realizations from the Properties; and
 - (d) is reasonable and appropriate in the circumstances.

VII. ESTIMATED TIMELINE FOR THE SALE OF THE PROPERTIES

43. Set out below is the proposed timeline for the sale of the Properties:
 - a) **October 15, 2020 to October 29, 2020** – premarketing including review of documents, compiling of marketing material and preparation of data room;
 - b) **October 30, 2020 to November 24, 2020** – marketing of the Properties by Colliers;

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- c) **November 24, 2020** - receipt of Bids;
 - d) **November 24, 2020 to November 26, 2020** - evaluation of Bids, shortlist parties, request updated offers from shortlisted parties;
 - e) **November 30, 2020** - receipt of updated offers;
 - f) **November 30, 2020 to December 4, 2020** - review of updated offers from shortlisted parties and enter into negotiations/conduct auction (if required);
 - g) **December 4, 2020** - select the Successful Bid;
 - h) **December 7, 2020 to December 8, 2020** - service of materials in connection with the Receiver's application to the Court for approval of the sale of the Properties;
 - i) **December 11, 2020** - Court hearing for the approval of the sale of the Properties; and
 - j) **December 23, 2020 or earlier** - complete the closing of the sale of the Properties.

VIII. THE LISTING AGREEMENT

- 44. As set out in the First Report, the Receiver requested listing proposals from CBRE Limited, Avison Young Commercial Real Estate (Ontario) Inc. and Colliers. The listing proposals received, including a summary thereof, were included in Confidential Appendix 'D' to the First Report.
- 45. Subsequent to the issuance of the October 5 Endorsement, the Receiver asked each of the above aforementioned listing brokerages to update their proposals taking into account the proposed stalking horse bid process. Each of the listing

brokerages updated their proposals and an updated summary of the listing proposals is attached hereto as **Confidential Appendix “H”**.

46. After review of the listing proposals including the commissions each proposed to charge, the Receiver selected to work with Colliers, one of the world’s largest commercial real estate services firms, to effect the Sale Procedure.
47. As of the date of this report, the Receiver is in the process of negotiating with Colliers the final terms of the listing agreement. Although all the terms of the listing agreement have not yet been finalized, the terms of the proposed listing agreement provide that:
 - (a) the term of the agreement is for the period October 15, 2020 to April 30, 2021; and
 - (b) Colliers will earn a significantly higher commission if the Successful Bid is an amount that is higher than the Stalking Horse Price.
48. It is the Receiver’s intention to file with the Court, prior to October 14, 2020, a copy of the listing agreement that has been signed by Colliers (the **“Listing Agreement”**).
49. The Receiver is of the view that the engagement of a commercial brokerage to market the Properties in the implementation of the Sale Procedure is, in the circumstances of this receivership, beneficial to stakeholders of this receivership and to the efforts to maximize realizations from the Properties.
50. The Receiver is also of the view that the compensation to be paid to Colliers by the Receiver upon the sale of the Properties is fair and reasonable, and provides

sufficient incentive to Colliers to obtain an offer(s) which exceeds the Stalking Horse Price.

51. The Receiver is therefore requesting the approval of the Court for the Receiver to enter into the Listing Agreement.

Sealing of Commercial Sensitive Terms

52. The Receiver is of the view that disclosure of the (i) listing proposals, and the (ii) terms of the commission structure set out in the Listing Agreement could potentially have an adverse influence on the Sale Procedure. The Receiver is therefore requesting that the Court make a sealing order in respect of the listing proposals and the Listing Agreement in order to avoid any potential adverse impact on the Sale Procedure.

IX. PROPERTY TAXES

53. The City of Toronto has advised the Receiver that \$193,291.20 is owing for property taxes for the Properties as of October 6, 2020, as follows:
- i) 110 and 112 Avenue Road - \$90,315.53;
 - ii) 114 Avenue Road - \$38,455.09; and
 - iii) 116 Avenue Road - \$64,520.58.
54. The Receiver does not have the funds to pay the outstanding property taxes. Accordingly, payment of the outstanding property taxes will occur at the time of the closing of the sale of the Properties.

X. RECEIVER'S ACTIVITIES TO DATE

Property Manager

55. The Receiver has now executed the property management agreement with Richmond Advisory Services Inc.

Tenants of 110 And 112

56. The commercial tenant at 112 vacated the premises on September 30, 2020. The Receiver does not intend to re-lease the premises given the anticipated sale of the Properties in the near future.

57. As noted in the First Report, the Receiver was contacted by a party (the "**Prospective Tenant**") who claims to have made arrangements to rent the unoccupied unit at 110 but does not have a formal lease agreement. The Receiver has advised the Prospective Tenant that the Receiver would likely be in possession of the Properties for only another three to four months and, at best, might entertain a new lease on a short-term month-to-month basis. As of the date of this report, no steps have been taken by the Prospective Tenant or the Receiver to further pursue this potential lease.

58. The Receiver has reviewed documentation which suggests that certain tenants were required to pay a deposit to the landlord. The Debtors have confirmed that \$8,450 in tenant deposits were received. The Receiver has requested that the Debtors transfer to the Receiver the tenant deposits and any post-dated rent cheques they are holding.

Repairs and Maintenance

59. The Receiver has taken steps to address certain repairs and maintenance issues and/or to secure the Properties, including:

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- a) installing a locked gate and repairing gaps in the fencing at 114 to prevent access to the backyard by trespassers;
 - b) repairing the fencing at 116 to prevent unauthorized garbage dumping on the Properties;
 - c) replacing a missing panel from the second floor balcony at 112;
 - d) scheduling of an inspection of the hot water boiler system at 112, which had not been inspected in the last 3 years, as required by the Technical Standards and Safety Authority; and
 - e) scheduling of an inspection of the HVAC system at 110 based on the property manager's observations of insufficient heating in the residential units.

HST Reporting

60. The Receiver is in the process of opening an HST account in connection with this receivership. Typically, Canada Revenue Agency (“**CRA**”) requires that the Receiver open another RT account under the same business account that was used by the company to report revenue and HST prior to the receivership. However, as rental revenue for 110 and 112 was reported under a related company that is not subject to the Appointment Order, the Receiver's HST account will be opened under the business account of the entity holding legal title to 110.

Utilities and property tax payments

61. The Receiver contacted the utility companies and the City of Toronto to notify them of the Receiver's appointment and to request that new utility accounts be set up in the name of the Receiver.

XI. CONCLUSION

62. The Receiver respectfully requests that the Court make an Order:

- a) authorizing the Receiver to conduct the Sale Procedure;
- b) authorizing the Receiver to enter into the Listing Agreement;
- c) authorizing the Receiver to enter into the Stalking Horse Agreement;
- d) sealing Confidential Appendix “H” to the Second Report and the Listing Agreement once filed; and
- e) approving the Second Report and the Receiver’s conduct and activities described therein.

All of which is respectfully submitted to this Court as of this 9th day of October, 2020.

RSM CANADA LIMITED

In its capacity as Court-appointed Receiver of
110 Avenue Road, Toronto, 112 Avenue Road, Toronto,
114 Avenue Road, Toronto, and 116 Avenue Road, Toronto,
and not in its personal capacity



Per: Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President



Per: Daniel Weisz, CPA, CA, CFF, CIRP, LIT
Senior Vice President

APPENDIX "A"

Court File No. CV-20-00644927-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE *MADAM*) *FRIDAY*, THE *11TH*
JUSTICE *DIETRICH*) DAY OF *v*, 2020
) *SEPTEMBER*

BETWEEN:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

and

YORKVILLE CENTRAL INVESTMENTS INC., YORKVILLE CENTRAL 2
INVESTMENTS INC., YORKVILLE CENTRAL 3 INVESTMENTS INC.

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**ORDER
(appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing RSM Canada Limited as receiver and manager (in such capacities, the "Receiver") without security, over the lands and premises described as:

PIN No. 21214-0194: PT LT 3 PL 742 CITY EAST AS IN EM50567; TORONTO;
CITY OF TORONTO and known municipally as 110 Avenue Road, Toronto;

PIN No. 21214-0195: PT LT 3-4 PL 742 CITY EAST AS IN CA739828; TORONTO, CITY
OF TORONTO and known municipally as 112 Avenue Road, Toronto;

PIN No. 21214-0196: PT LT 4 PL 742 CITY EAST AS IN CT963202; TORONTO, CITY
OF TORONTO and known municipally as 114 Avenue Road, Toronto; and

PIN No. 21214-0221: LT 1 PL 639 CITY EAST S/T & T/W CA628958; TORONTO; CITY OF TORONTO and known municipally as 116 Avenue Road, Toronto

(collectively the "**Avenue Road Properties**") owned by Yorkville Central Investments Inc., Yorkville Central 2 Investments Inc. and Yorkville Central 3 Investments Inc. (the "**Debtors**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Curtis Jackson sworn August 5, 2020 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, and on reading the consent of RSM Canada Limited to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, RSM Canada Limited is hereby appointed Receiver, without security, of the Avenue Road Properties and for all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to the Avenue Road Properties, including all proceeds thereof (together with the Avenue Road Properties, (hereinafter collectively referred to as the "**Property**").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage and operate the Property, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, or cease to perform any contracts of the Debtors in respect of the Property;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets in respect of the Property or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors in respect of the Property and to exercise all remedies of the Debtors in respect of the Property in collecting such monies, including, without limitation, to enforce any security held by the Debtors in respect of the Property;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors in respect of the Property;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;

- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors in respect of the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
 - (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
 - (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors in respect of the Property;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any Property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have in respect of the Property; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the

Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors relating to the Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS IN RESPECT OF THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors in respect of the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors in respect of the Property are hereby stayed and suspended pending further Order of this Court. For certainty, nothing herein affects the rights of GC Capital Inc. to continue its proceeding against the Debtors in the British Columbia Superior Court bearing Court File No. VLC-S-S-205724.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtors in respect of the Property, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors in respect of the Property, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors in respect of the Property or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors in respect of the Property are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names in respect of the Property, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts"). For certainty, all receipts in respect of the Property shall be deposited into the Post Receivership Accounts and all Permitted Disbursements (defined below) shall be drawn from the Post Receivership Accounts. "Permitted Disbursements" shall include realty taxes, utilities, insurance, maintenance expenses, other reasonable Property-specific expenses, and business expenses associated with the Property. The monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or

relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

23. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://www.rsmcanada.com/avenue-road-properties>

24. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors’ creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

25. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

26. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors or any of them.

27. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

28. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

29. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the funds in the Receiver's possession with such priority and at such time as this Court may determine.

30. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in blue ink, appearing to read "Dietrich J.", is written above a horizontal line.

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that RSM Canada Limited, the receiver and manager (the "Receiver") of the Property of the Debtors, as such terms are defined in the Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 2020 appointing the Receiver (the "Order") made in an application having Court file number CV-20-00644927-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

RSM Canada Limited, solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

APPENDIX “B”

Court File Number: CV-20-00644927-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

AND

YORKVILLE CENTRAL INVESTMENTS INC., YORKVILLE CENTRAL 2
INVESTMENTS INC., YORKVILLE CENTRAL 3 INVESTMENTS INC.

Respondent(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Email/Facsimile No:
See counsel slip attached		

Order Direction for Registrar (**No formal order need be taken out**)
 Above action transferred to the Commercial List at Toronto (**No formal order need be taken out**)

Adjourned to: _____

Time Table approved (as follows): _____

Due to the COVID-19 crisis, I held a hearing on the above matter today by Zoom videoconference. This hearing was held in accordance with: (a) the Notice to the Profession issued by Chief Justice Morawetz on March 15, 2020 and the Update dated April 2, 2020; and (b) the “Changes to Commercial List operations in light of COVID-19” developed by the Commercial List judges in consultation with the Commercial List Users Committee. The Zoom videoconference facilities were arranged by Garfinkle Biderman LLP to facilitate the hearing, as per the foregoing COVID-19 practice directions.

Materials were sent to me by email prior to the hearing.

The Application to Appoint a Receiver

1. The applicant applies to appoint a receiver over three properties in the City of Toronto municipally known as 110-112 Avenue Road, 114 Avenue Road and 116 Avenue Road (the “Properties”).
2. The applicant loaned money to the Respondents secured by a first mortgage over the Properties among other security. The loan is in default.
3. The appointment of a receiver is supported by the second mortgagee of the Properties.
4. The Respondents are the registered owners of the Properties and they do not oppose the appointment of a receiver.
5. The applicant asserts that a receiver is required to assume control over the Properties, some of which are tenanted, and to pursue a sale with a view to maximizing the value for all stakeholders.
6. RSM Canada Limited has consented to act as receiver if so appointed by this court.
7. I am satisfied that the appointment of RSM Canada Limited (the “Receiver”) is just and convenient in the circumstances of this case.
8. My reasons include the following: i) the Respondents have committed events of default in respect of the loan made by the Applicant; ii) the Notice of Intention to Enforce Security pursuant to the *Bankruptcy and Insolvency Act* has expired; iii) the Applicant is permitted under the terms of its security documentation to appoint a receiver subject to certain conditions that appear to have been met; iv) there are property tax and utilities arrears; v) the continuing interest and penalties accruing on the first mortgage will erode the potential recovery from the collateral for any subsequent ranking creditor; vi) there is a certificate of pending litigation registered against the title to the Properties; vii) the Respondents attempted to sell the Properties in April of this year but were unsuccessful; and viii) because some of the Properties are tenanted, a receiver is needed to manage the Properties pending a sale.
9. All secured creditors have been given notice and have been given a reasonable opportunity to make representations. No one is opposing the appointment of the Receiver and the reasonable charge for the payment of its fees and disbursements.
10. Order to go in the form of the draft signed by me today. The Order is effective as of today’s date and it is not required that it be entered.

The Motion to Approve a Sale of the Properties to SC Land Inc.

1. On the assumption that the Receiver would be appointed, SC Land Inc. (“SC Land”) brought a motion for an order directing the Receiver to enter into an agreement of purchase and sale (the “Proposed Agreement”) with SC Land to sell the Properties to SC Land for a purchase price to which the Respondents had allegedly agreed in April 2020. It asserts that it would be prepared to close the sale by September 30, 2020 and the proceeds would cover both the first and second mortgage. An early closing would avoid the accrual of additional interest and penalty payments and ongoing fees of the receiver and counsel.

2. This motion is supported by the first and second mortgagee. It is opposed by the Respondents on the basis that the sale should not be approved without exposing the Properties to the market to determine the fair market value.
3. Synvest Investment Management (“Synvest”) consulted counsel yesterday and asserts that it may have a right of first refusal option in respect one of the Properties. SC Land disputes any such right. Counsel to Synvest seeks a short adjournment to give her time to review the relevant documents and to get instructions.
4. In my view, the motion is premature and should be adjourned to permit Synvest to make submissions on the motion should it choose to do so. The motion should also be adjourned to permit the newly-appointed Receiver to commence its work, which will include investigating and managing the Properties, ascertaining the market value of the Properties, considering the Proposed Agreement, and preparing a report relating to the marketing of the Properties.
5. Accordingly, the motion is adjourned to **October 5, 2020 at 12 noon**.
6. Counsel to Synvest shall serve and file its materials, if any, by September 18, 2020. The Receiver shall serve and file its report by September 25, 2020 and any reply to its report shall be served and filed by September 30, 2020.
7. The record contains appraisals of the Properties. Each of these appraisals shall be **sealed** until the Properties are sold in order to protect this commercially sensitive information.



Dietrich J.
Superior Court of Justice (Toronto)
September 11, 2020

APPENDIX "C"

Court File No. CV-20-00644927-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

- and -

YORKVILLE CENTRAL INVESTMENTS INC., YORKVILLE CENTRAL 2 INVESTMENTS
INC., YORKVILLE CENTRAL 3 INVESTMENTS INC.

Respondents

**FIRST REPORT OF THE RECEIVER OF
110 AVENUE ROAD, TORONTO, 112 AVENUE ROAD, TORONTO,
114 AVENUE ROAD, TORONTO AND 116 AVENUE ROAD, TORONTO**

September 25, 2020

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I. INTRODUCTION

1. Pursuant to an application (the “**Application**”) made by Cameron Stephens Mortgage Capital Ltd. (“**Cameron Stephens**”), by Order of the Ontario Superior Court of Justice (the “**Court**”) dated September 11, 2020 (the “**Appointment Order**”), RSM Canada Limited (“**RSM**” or the “**Receiver**”) was appointed as receiver and manager over the lands and premises municipally known as 110 Avenue Road, Toronto, 112 Avenue Road, Toronto, 114 Avenue Road, Toronto, and 116 Avenue Road, Toronto (collectively the “**Properties**”) owned by Yorkville Central Investments Inc. (“**Yorkville Central**”), Yorkville Central 2 Investments Inc. (“**Yorkville Central 2**”), and Yorkville Central 3 Investments Inc. (“**Yorkville Central 3**”), (collectively, the “**Debtors**”), and for all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to the Properties, including all proceeds thereof (together with the Properties, hereinafter collectively referred to as the “**Property**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. The Appointment Order authorizes the Receiver to, among other things:
 - take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

-
- market any or all of the Property, including advertising and soliciting offers in respect of the Property and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate; and
 - sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business with the approval of this Court.
3. Immediately following the granting of the Appointment Order, the Honourable Justice Dietrich began hearing SC Land Inc.'s ("**SC Land**") motion for an order directing the Receiver to enter into an Agreement of Purchase and Sale with SC Land for the sale of the Properties (the "**Proposed Agreement**") pursuant to the terms set out in the motion (the "**SC Motion**"). The Respondents opposed the SC Motion. A copy of the SC Motion, without appendices, is attached hereto as **Appendix "B"**.
 4. Counsel to Synvest Investment Management Inc. ("**Synvest**"), which was in the process of being engaged, set out Synvest's position that Synvest may have a right of first refusal option in respect of one of the Properties, and requested a short adjournment to review the relevant documents and to get instructions.
 5. The Receiver did not take any position on the SC Motion.
 6. After hearing argument on the SC Motion, the Honourable Justice Dietrich made an endorsement (the "**September 11 Endorsement**") which provided for, *inter alia*, the following:
 - adjourning the SC Motion to October 5, 2020;
 - in the interim, the Receiver was to commence its work, including investigating and managing the Properties, ascertaining the market value

of the Properties, considering the Proposed Agreement, and preparing a report relating to the marketing of the Properties;

- Synvest was to serve and file materials, if any, by September 18, 2020;
- the Receiver was to serve and file its report by September 25, 2020; and
- any reply to the Receiver's report was to be served and filed by September 30, 2020.

A copy of the September 11 Endorsement is attached hereto as **Appendix "C"**.

7. As of September 18, 2020, Synvest did not file any materials. However, counsel to Synvest provided a letter to the Receiver's counsel setting out the basic terms of an offer that it would be prepared to make for the Properties.
8. On September 22, 2020, SC Land filed a Supplementary Motion Record which included, *inter alia*, an "Appraisal Review" from Colliers dated September 17, 2020 in which Colliers reviewed the appraisal report provided by D. Bottero & Associates Limited ("**Bottero**") with respect to Bottero's appraisal dated March 3, 2020 of the Properties as of February 26, 2020.
9. The Appointment Order, the September 11 Endorsement and other court documents (other than those documents that contain information that has been sealed, or that are proposed to be sealed) have been posted on the Receiver's website, which can be found at rsmcanada.com/avenue-road-properties.
10. The Receiver has retained the firm of Paliare Roland Rosenberg Rothstein LLP to act as the Receiver's independent legal counsel.

II. PURPOSE OF REPORT

11. The purpose of this first report to the Court (the “**First Report**”) is to:
- (a) report to the Court on the activities of the Receiver from the date of its appointment to September 24, 2020;
 - (b) report to the Court on the steps taken by the Receiver to ascertain the value of the Properties and the Receiver’s findings in respect thereof;
 - (c) provide comments with respect to the Proposed Agreement;
 - (d) seek the advice and direction of the Court with respect to the next steps to be taken by the Receiver with respect to the Proposed Agreement and the marketing of the Properties; and
 - (e) seek an Order:
 - i. approving the First Report and the Receiver’s activities described in the First Report;
 - ii. sealing Confidential Appendix “D”; and
 - iii. providing such further directions to the Receiver with respect to the Proposed Agreement and the marketing of the Properties.

Terms of Reference

12. In preparing this report and making the comments herein, the Receiver has relied upon certain information from third-party sources (collectively, the “**Information**”). The Receiver has, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the CPA

Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

13. Unless otherwise stated, all dollar amounts contained in the First Report are expressed in Canadian dollars.

III. EXECUTIVE SUMMARY

14. In order to assist the Receiver ascertain the market value of the Properties and assess the Proposed Agreement, the Receiver:
 - i) sought listing proposals from each of CBRE Limited ("**CBRE**"), Avison-Young Commercial Real Estate (Ontario) Inc. ("**Avison Young**") and Colliers Inc. ("**Colliers**") (collectively, the "**Listing Proposals**"); and
 - ii) engaged Cushman & Wakefield ULC ("**C&W**") to provide an appraisal of the Properties.
15. The Receiver received listing proposals from each of CBRE, Colliers and Avison Young. C&W provided to the Receiver a draft "Preliminary Research & Analysis Summary" with an effective date of September 20, 2020, (the "**C&W Draft Analysis**") to be followed by a final report by on or about October 2, 2020.
16. The information contained in the Listing Proposals and the C&W Draft Analysis suggest to the Receiver that (i) the "fair market value" of the Properties (i.e., the price at which a willing buyer would purchase and a willing vendor would sell), is largely dependent on a purchaser's view of the potential future development relating to the density that may be achieved on the Properties, and (ii) the selling price of the Properties could potentially be more than the purchase price set out in

the Proposed Agreement. As such, until the Properties are exposed to the marketplace in a fair and transparent process, the “fair market value” of the Properties will not be known.

17. Based on the above, the Receiver is not in a position at this time to conclude that the purchase price set out in the Proposed Agreement is the most advantageous to the stakeholders in this proceeding.
18. The Receiver is cognizant of the concerns of the Properties’ mortgagees that the Proposed Agreement represents a degree of certainty particularly in light of the COVID-19 pandemic, ongoing costs being incurred including (i) the interest continuing to accrue on the Debtors’ indebtedness to the mortgagees, (ii) the Receiver’s fees and disbursements including the Receiver’s legal fees, and (iii) ongoing protective disbursements to be made by the Receiver relating to the Properties.
19. As such, the Receiver is of the view that a “Stalking Horse” sales process could be appropriate in this proceeding and would be willing to speak, before the return of the within motion on October 5, 2020, with any party to this proceeding which may be interested in being the Stalking Horse bidder.
20. The First Report refers to a number of documents that contain information that, if in the public domain, could negatively impact the marketing of the Properties and, accordingly, are included in **Confidential Appendix “D”** that is being filed with the Court.

IV. BACKGROUND

21. The Properties consist of land and premises described as follows:

-
- 110 Avenue Road, Toronto (“**110**”) is a converted Victorian house containing commercial and residential rental units. 110 is owned by Yorkville Central 3;
 - 112 Avenue Road, Toronto (“**112**”) is a converted Victorian house containing one commercial unit. 112 is owned by Yorkville Central 3;
 - 114 Avenue Road, Toronto (“**114**”) is a Victorian house that is currently vacant and has undergone a partial demolition. 114 is owned by Yorkville Central 2; and
 - 116 Avenue Road, Toronto (“**116**”) is a vacant piece of land. 116 is owned by Yorkville Central.
22. Yorkville Central, Yorkville Central 2 and Yorkville Central 3 are federally incorporated companies incorporated on January 12, 2017, May 3, 2017, and August 30, 2017, respectively. The registered business addresses of the Debtors are located in Vancouver, BC. Messrs. Macario Teodoro Reyes and Bradley Berry are the directors of each of the Debtors.
23. Cameron Stephens is a company incorporated under the laws of the Province of Ontario, having its head office in Toronto, which carries on the business of providing mortgage financing.
24. Cameron Stephens is the registered holder of a first mortgage against the Properties.
25. The Debtors were in default of the mortgage and Cameron Stephens sought the appointment of the Receiver pursuant to a Notice of Application dated August 5, 2020.

-
26. On September 11, 2020, the Court issued the Appointment Order.
 27. As at September 1, 2020, the Debtors' indebtedness to Cameron Stephens was \$12,457,570. The Receiver has not, as of the date of the First Report, sought an independent legal opinion on the mortgage held by Cameron Stephens.
 28. GC Capital Inc. ("**GC**") holds a second mortgage on the Properties. As at August 31, 2020, the Debtors' indebtedness to GC was \$2,635,417. The Receiver has not, as of the date of the First Report, sought an independent legal opinion on the mortgage held by GC.

V. THE SALE OF THE PROPERTIES

29. As set out earlier herein, in her Endorsement, the Honourable Justice Dietrich directed the Receiver to ascertain the market value of the Properties and to consider the Proposed Agreement.
30. In order prepare the information set out in this report, the Receiver has:
 - i) reviewed on a preliminary basis the appraised values set out in the five appraisals that were included in materials filed by either Cameron Stephens or SC Land;
 - ii) sought listing proposals from each of CBRE, Avison Young and Colliers; and
 - iii) engaged C&W to provide an appraisal of the Properties.
31. In view of the short time period in which the Receiver was required to file this report, there may be other information that the Receiver has not reviewed in respect of the Properties. Notwithstanding, the Receiver's observations and conclusion are based primarily on third party information that the Receiver has received independently.

32. The Receiver's findings and observations are set out below.

Appraisals obtained by Cameron Stephens and SC Land

33. Included in the materials filed by the parties were five appraisals that are dated between March 3, 2020 and September 10, 2020.

34. A summary of the appraisals is included as **Tab 1** to **Confidential Appendix "D"**. Copies of the individual appraisals are attached as **Tabs 2, 3, 4, 5 and 6** to **Confidential Appendix "D"**. The Receiver has not conducted any independent analysis of these appraisals.

35. With reference to the appraisal prepared by Bottero dated March 3, 2020, regarding the Properties as of February 26, 2020, SC Land engaged Colliers to conduct a review of that appraisal with a view to having Colliers provide its opinion as to whether the analysis, opinions and conclusions set out in the Bottero appraisal are appropriate and reasonable. Colliers presented the results of its review in its letter dated September 18, 2020 (the "**Colliers Review Letter**") which was included in SC Land's Supplementary Motion Record served on September 22, 2020. A copy of the Colliers Review Letter is attached for convenience as **Tab 7** to **Confidential Appendix "D"**. The Receiver has not conducted any independent analysis of this review.

C&W Appraisal

36. In view of the "competing" appraisals relating to the Properties, and the positions advanced by the various parties to this proceeding, the Receiver was of the view that it should obtain its own independent appraisal of the Properties and engaged

C&W accordingly. On September 23, 2020, C&W provided to the Receiver the C&W Draft Analysis, which is to be followed by a final report by on or about October 2, 2020. The Receiver received the C&W Draft Analysis which provides C&W's opinion of the value of the Properties having an effective date of September 20, 2020. A copy of the C&W Draft Analysis is attached as **Tab 8 to Confidential Appendix "D"**.

Listing Proposals Obtained by the Receiver

37. In order to obtain further information on the Properties, the Receiver sought, and received, listing proposals from three real estate brokerages, being CBRE, Avison Young and Colliers. A summary of the information contained in the listing proposals, is attached as **Tab 9 to Confidential Appendix "D"**. Copies of the CBRE, Colliers and Avison Young listing proposals are attached as **Tabs 10, 11, and 12**, respectively, to **Confidential Appendix "D"**.

VI. THE PROPOSED AGREEMENT

38. SC Land submitted the Proposed Agreement to acquire the Properties. At this time, pending further direction of the Court, the Receiver has not reviewed the terms of the Proposed Agreement, other than the purchase price referred to therein, to assess whether they are acceptable to the Receiver. A copy of the Proposed Agreement is attached as **Tab 13 to Confidential Appendix "D"**.
39. The Receiver's assessment of the Proposed Agreement is based on the proposed purchase price set out therein.

VII. RECEIVER'S VIEW OF THE PROPOSED AGREEMENT

40. The information contained in the Listing Proposals and the C&W Draft Analysis suggest to the Receiver that (i) the “fair market value” of the Properties (i.e., the price at which a willing buyer would purchase and a willing vendor would sell) is largely dependent on a purchaser’s view of the potential future development relating to the density that may be achieved on the Properties; and (ii) the selling price could potentially be more than the purchase price set out in the Proposed Agreement. As such, until the Properties are exposed to the marketplace in a fair and transparent process, the “fair market value” of the Properties will not be known.
41. Moreover, Synvest, through its counsel, Aird & Berlis LLP, has submitted to the Receiver the terms of an offer that Synvest would be prepared to make for the Properties. A copy of Aird & Berlis LLP’s letter dated September 18, 2020 is attached at **Tab 14 to Confidential Appendix “D”**.
42. In addition, the Receiver has been contacted by a commercial brokerage representing the owners of a nearby property expressing their interest in acquiring part or all of the Properties and have requested details on the terms and conditions of the Receiver’s sale procedure.
43. As a result, based on all of the above, the Receiver is not in a position at this time to conclude that the purchase price set out in the Proposed Agreement is the most advantageous to the stakeholders in this proceeding.
44. The Receiver is cognizant of the concerns of the Properties’ mortgagees that the Proposed Agreement represents a degree of certainty particularly in light of the COVID-19 pandemic, ongoing costs being incurred including (i) the interest

continuing to accrue on the Debtors' indebtedness to the mortgagees, (ii) the Receiver's fees and disbursements including the Receiver's legal fees and (iii) ongoing protective disbursements to be made by the Receiver relating to the Properties.

45. As such, the Receiver is of the view that a "Stalking Horse" sales process could be appropriate in this proceeding and would be willing to speak, before the return of the within motion on October 5, 2020, with any party to this proceeding which may be interested in being the Stalking Horse bidder.
46. The First Report refers to a number of documents that contain information that, if in the public domain, could negatively impact the marketing of the Properties and, accordingly, are included in Confidential Appendix "D" that are being submitted separately to the Court.

VIII. RECEIVER'S ACTIVITIES TO DATE

Possession and Security

47. On September 11, 2020, following the issuance of the Appointment Order, the Receiver attended at the Properties.
48. The Receiver arranged for a locksmith to change the locks to (i) the unoccupied residential units and common entrance door at 110, (ii) the exterior entrances at 114 and (iii) the padlock to the door giving entrance into the fenced lot at 116.
49. Upon its inspection of the Properties, the Receiver observed that demolition had commenced inside 114, which could make the premises unsafe. The Receiver gave instruction to RAS (defined below) that neither RAS nor any other persons

are to be allowed into the building. The Receiver has also noted other potential safety issues and will be addressing them with RAS.

Property Manager

50. Upon its appointment, the Receiver contacted Medallion Capital Corp. (“**Medallion**”), the company retained by the Debtors to provide maintenance services at the Properties, to inform Medallion of the Receiver’s appointment and that the Receiver would not be using Medallion’s services.
51. In order to monitor the condition of the Property on an ongoing basis, the Receiver has engaged Richmond Advisory Services Inc. (“**RAS**”) to provide certain property management services including:
 - i) periodic site inspection of the Properties; and
 - ii) obtaining quotes for repairs and maintenance and overseeing work to be done, as required.
52. The Receiver anticipates that it will shortly finalize the terms of a property management agreement with RAS.

Insurance

53. Upon its appointment, the Receiver contacted the Debtors’ insurance broker to inquire if the Debtors’ insurance was in effect and if the insurer would add the Receiver as a named insured to the policy. The broker informed the Receiver that the Receiver could not be added to the policy and that the broker could not confirm that the policy would remain in place. The broker advised the Receiver to arrange its own insurance coverage.

-
54. The Receiver obtained its own property and liability insurance with coverage effective September 11, 2020. The Receiver's current coverage is scheduled to expire on December 11, 2020.
55. As 114 and 116 are vacant, the Receiver's insurer requires site inspections of the Properties. Periodic site inspections will be continued until the Properties are sold.

Books and Records

56. Upon its appointment, the Receiver contacted the Debtors to request information regarding the tenants of 110 and 112 and the creditors of the Properties and that information was provided by the Debtors on September 16, 2020. Subsequently, the Receiver requested certain information on the Properties including surveys and experts reports, and additional information was received on September 18, 2020.

Statutory Notices

57. On September 21, 2020, the Receiver sent a Notice and Statement of Receiver pursuant to Section 245(1) of the Bankruptcy and Insolvency Act (the "**BIA**") to the known creditors of the Property (the "**245 Notice**") as identified through information provided by the Debtors, a title search of the Property, and Personal Property Security Registration System ("**PPSA**") searches of the Debtors. A copy of the 245 Notice is attached hereto as **Appendix "E"**.

IX. TENANTS OF 110 AND 112

58. Upon attending at the Properties on September 11, 2020, the Receiver notified the tenants who were on the premises of its appointment. Tenants who were not on the premises were notified by phone and/or email.

-
59. The tenants of 110 and 112 are comprised of:
- two residential tenants and one commercial tenant at 110;
 - one commercial tenant occupying the whole building at 112.
60. The commercial tenant at 112 is vacating the premises by October 2020. The lease for the commercial tenant at 110 expired in 2019 and occupancy is currently being extended on a month-to-month basis. The two residential tenants are also leasing the premises on a month-to-month basis and the terms of occupancy are evidenced in an email rather than by a formal lease document.
61. 110 also contains a third residential unit that is currently vacant. The Receiver has been contacted by a party (the “**Prospective Tenant**”) who claims to have made arrangements to rent the unoccupied unit at 110 but does not have a formal lease agreement. The Prospective Tenant is named on the rent roll and on one of the email leases as the tenant for one of the two occupied residential units at 110, which appears to be occupied by a family member. The Receiver is presently considering its position as it relates to the Prospective Tenant.

X. CONCLUSION

62. The Receiver respectfully requests that the Court make an Order:
- (i) approving the First Report and the Receiver’s activities described in the First Report;
 - (ii) sealing Confidential Appendix “D”; and
 - (iii) providing such further directions to the Receiver with respect to the Proposed Agreement and the marketing of the Properties.

All of which is respectfully submitted to this Court as of this 25th day of September, 2020.

RSM CANADA LIMITED

In its capacity as Court-appointed Receiver of
110 Avenue Road, Toronto, 112 Avenue Road, Toronto,
114 Avenue Road, Toronto, and 116 Avenue Road, Toronto,
and not in its personal capacity



Per: Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President



Per: Daniel Weisz, CPA, CA, CFF, CIRP, LIT
Senior Vice President

APPENDIX "D"

Court File No. CV-20-00644927-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

- and -

YORKVILLE CENTRAL INVESTMENTS INC., YORKVILLE CENTRAL 2 INVESTMENTS
INC., YORKVILLE CENTRAL 3 INVESTMENTS INC.

Respondents

SUPPLEMENTAL REPORT TO THE FIRST REPORT OF THE RECEIVER

October 2, 2020

I. INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (Commercial List) dated September 11, 2020, RSM Canada Limited was appointed as receiver and manager over the lands and premises municipally known as 110 Avenue Road, Toronto, 112 Avenue Road, Toronto, 114 Avenue Road, Toronto, and 116 Avenue Road, Toronto (collectively the “**Properties**”) owned by Yorkville Central Investments Inc. (“**Yorkville Central**”), Yorkville Central 2 Investments Inc. (“**Yorkville Central 2**”), and Yorkville Central 3 Investments Inc. (“**Yorkville Central 3**”), (collectively, the “**Debtors**”), and for all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to the Properties, including all proceeds thereof (together with the Properties, hereinafter collectively referred to as the “**Property**”).

II. PURPOSE OF SUPPLEMENTAL REPORT

2. The First Report of the Receiver dated September 25, 2020 (the “**First Report**”) was filed in connection with a motion by SC Land Inc. (“**SC Land**”) for an order directing the Receiver to enter into an Agreement of Purchase and Sale with SC Land for the sale of the Properties (the “**Proposed Agreement**”) pursuant to the terms set out in the motion (the “**SC Land Motion**”). The First Report was filed to:

-
- i) report to the Court on the activities of the Receiver from the date of its appointment to September 24, 2020;
 - ii) report to the Court on the steps taken by the Receiver to ascertain the value of the Properties and the Receiver's findings in respect thereof;
 - iii) provide comments with respect to the Proposed Agreement;
 - iv) seek the advice and direction of the Court with respect to the next steps to be taken by the Receiver with respect to the Proposed Agreement and the marketing of the Properties; and
 - v) seek an Order:
 - i. approving the First Report and the Receiver's activities described in the First Report;
 - ii. sealing Confidential Appendix "D" to the First Report; and
 - iii. providing such further directions to the Receiver with respect to the Proposed Agreement and the marketing of the Properties.
3. The purpose of this Supplemental Report to the First Report (the "**Supplemental Report to the First Report**") is to provide the Court with additional information, in the event that the Court does not grant the relief requested in the SC Land Motion, relating to the Receiver's view set out in the First Report that a "Stalking Horse" sales process could be appropriate in this proceeding.
4. This Supplemental Report should be read in conjunction with the First Report, including the Terms of Reference referred to therein.
5. Unless defined herein, capitalized terms herein have the same meaning as in the First Report.

III. POTENTIAL “STALKING HORSE” PROCESS

6. With reference to the Endorsement made by Justice Dietrich on September 11, 2020, the First Report set out:
 - i) that the Receiver was not in a position at this time to conclude that the purchase price set out in the Proposed Agreement is the most advantageous to the stakeholders in this proceeding; and
 - ii) the Receiver’s view that a “Stalking Horse” sales process could be appropriate in this proceeding.
7. Subsequent to the filing of the First Report, the Receiver has engaged in discussions with counsel to each of SC Land and Synvest to determine the interest of their respective clients to submit a “Stalking Horse” offer.
8. SC Land, through counsel, confirmed in writing to the Receiver that it was interested in being a “Stalking Horse” bidder and provided the Receiver with the salient terms under which it was prepared to proceed. The Receiver has reviewed these salient terms and, subject to finalization of the terms of a “Stalking Horse” agreement of purchase and sale, the Receiver would be prepared to recommend such agreement for approval by the Court.
9. In the event that the Court does not grant the relief requested in the SC Land Motion, the Receiver intends on making an application to the Court as soon as practically possible to seek the Court’s approval of a sale procedure to effect the sale of the Properties. If the Receiver is able to finalize the “Stalking Horse” agreement of

purchase and sale on the salient terms submitted by SC Land, then the proposed sale procedure will be by way of a “Stalking Horse” bidding process.

IV. CONCLUSION

10. The Receiver respectfully requests that, in addition to the relief requested in the First Report, the Court grant an Order approving the Supplemental Report to the First Report.

All of which is respectfully submitted to this Court as of this 2nd day of October, 2020.

RSM CANADA LIMITED

In its capacity as Court-appointed Receiver of
110 Avenue Road, Toronto, 112 Avenue Road, Toronto,
114 Avenue Road, Toronto, and 116 Avenue Road, Toronto,
and not in its personal capacity



Per: Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President



Per: Daniel Weisz, CPA, CA, CFF, CIRP, LIT
Senior Vice President

APPENDIX "E"

From: Conway, Madam Justice Barbara (SCJ)

Sent: Monday, October 5, 2020 3:54 PM

To: Jeff.Larry@paliareroland.com; wgreenspoon@garfinkle.com; GruberD@bennettjones.com; Elizabeth.Rathbone@paliareroland.com; Tannenbaum, Bryan <bryan.tannenbaum@rsmcanada.com>; Weisz, Daniel <daniel.weisz@rsmcanada.com>; rshastri@ksllp.ca; jwortzman@teplitskycolson.com; amcewan@airdberlis.com; smitra@airdberlis.com; callen@teplitskycolson.com

Cc: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>

Subject: CAMERON STEPHENS MORTGAGE CAPITAL LTD. V. YORKVILLE INVESTMENTS INC. ET AL. CV-20-00644927-00CL

Importance: High

This hearing proceeded before me today by Zoom. The names of the attendees are listed on the attached counsel slip.

In April 2020, SC Lands entered into an agreement of purchase and sale (APS) to acquire the Respondents' properties for \$16 million. The Respondents are now in receivership. SC Lands brought a motion for an order directing the Receiver to sell the properties to it, and a vesting order re same, for the same net price as in the APS. The first and second mortgagees supported the motion. The motion was adjourned by Justice Dietrich to permit, among other things, the Receiver to ascertain the value of the properties and prepare a report to the court with respect to the marketing of the properties. It has now done so.

I have reviewed the Receiver's first and supplemental reports and the Confidential Appendix. The Receiver takes no position on the SC Lands' motion and can neither recommend or oppose same. It states, at paragraph 43 of its first report, that "the Receiver is not in a position at this time to conclude that the purchase price set out in the Proposed Agreement is the most advantageous to the stakeholders in this proceeding".

Based on the record before me, I am not prepared to approve the SC Lands transaction without giving the Receiver at least some opportunity to expose the properties to the market and be in a position to make a recommendation to this court. The court simply cannot be satisfied that the price offered by SC Lands maximizes the recovery for the Respondents' stakeholders. That said, the court is mindful of the fact that a lengthy process could erode recovery as receivership costs, taxes and interest continue to accrue. The Receiver is prepared to develop a sales process (with terms worked out with SC Lands to be a stalking horse bidder, that the Receiver is prepared to recommend to the court) and return to court on an expedited basis to get the process started.

I advised counsel that this is the better route to follow. The Receiver shall return to court on **October 14, 2020 for 30 minutes before me (time to be confirmed with the Commercial List office)** to seek court approval of a sales process with a stalking horse bidder. The proposed process will be on a relatively quick time frame, to enable the Receiver and the court to determine if indeed there is interest for the properties for a price that will yield greater recovery to stakeholders, taking into account the additional costs that will have to be incurred throughout the process.

SC Lands' motion is dismissed without costs and without prejudice to it pursuing the purchase of the properties as a stalking horse bidder, subject to court approval. I will continue to case manage

this matter to ensure that the process can move forward in a practical and commercially sensible manner, taking into account the factors referred to above.

I am granting a sealing order with respect to the Receiver's Confidential Appendix. I am satisfied that the *Sierra Club* test has been met for these materials. **On the resumption of regular court operations, it will be the responsibility of counsel for the Receiver to ensure that the subject materials are properly identified and protected under seal in the court file.**

A handwritten signature in blue ink, appearing to read "Conway J.", with a stylized flourish at the end.

Superior Court of Justice (Toronto)

COUNSEL SLIP

MATTER: ***CAMERON STEPHENS MORTGAGE CAPITAL LTD. V. YORKVILLE INVESTMENTS INC. ET AL.***

COURT FILE NO.: CV-20-00644927-00CL

HEARING DATE: October 5, 2020, 12:00 P.M.

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APPENDIX "F"

RSM CANADA LIMITED, solely in its capacity as court-appointed receiver and manager of the lands and premises municipally known as 110 Avenue Road, Toronto, Ontario, 112 Avenue Road, Toronto, Ontario, 114 Avenue Road, Toronto, Ontario and 116 Avenue Road, Toronto, Ontario, and not in its personal capacity and without personal or corporate liability

- and -

SC LAND INC., a company incorporated in accordance with the laws of the province of Ontario

AGREEMENT OF PURCHASE AND SALE

110 Avenue Road, Toronto, Ontario, 112 Avenue Road, Toronto, Ontario, 114 Avenue Road, Toronto, Ontario and 116 Avenue Road, Toronto, Ontario

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AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made as of October 9, 2020 (the “**Execution Date**”).

B E T W E E N:

RSM CANADA LIMITED, solely in its capacity as court-appointed receiver and manager of the lands and premises municipally known as 110 Avenue Road, Toronto, Ontario, 112 Avenue Road, Toronto, Ontario, 114 Avenue Road, Toronto, Ontario and 116 Avenue Road, Toronto, Ontario, and not in its personal capacity and without personal or corporate liability

(the “**Vendor**” or “**Receiver**”)

- and -

SC LAND INC., a company incorporated in accordance with the laws of the province of Ontario

(the “**Purchaser**”)

(the “**Purchaser**”)

RECITALS:

- A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated September 11, 2020 (the “**Appointment Order**”), RSM Canada Limited (the “**Receiver**”) was appointed receiver and manager, without security, of the lands and premises municipally known as 110 Avenue Road, Toronto, Ontario, 112 Avenue Road, Toronto, Ontario, 114 Avenue Road, Toronto, Ontario and 116 Avenue Road, Toronto, Ontario, (collectively, the “**Avenue Road Properties**”) owned by the Debtors and for all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to the Avenue Road Properties, including all proceeds thereof.
- B. At the time of the making of the Appointment Order, the Debtors owned the Avenue Road Properties and more particularly described on Schedule A attached hereto (the “**Lands**”).
- C. The Appointment Order authorizes the Receiver to market the Subject Assets, including advertising and soliciting offers in respect of the Subject Assets, or any part or parts thereof and to negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
- D. The Purchaser has agreed to act as a “stalking horse bidder” in connection with the sale of all of the right, title and interest of the Debtors in and to the Subject Assets, meaning that, in the absence of the Receiver’s acceptance of a bid for the Subject Assets made in accordance with the Sale Procedure which is superior to this Agreement (as determined by

the Receiver in accordance with the Sale Procedure), the Purchaser has agreed to purchase on an “as is, where is” basis all of the right, title and interest of the Debtors in and to the Subject Assets on the terms and subject to the conditions set forth in this Agreement, in accordance with the Sale Procedure and subject to obtaining the Vesting Order.

- E. The Receiver intends to seek the Sale Procedure Order authorizing and directing the Receiver to enter into this Agreement and to carry out the Sale Procedure.
- F. The Vendor desires to sell to the Purchaser and the Purchaser desires to purchase from the Vendor the Subject Assets in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and the sum of \$10.00 paid by each of the Vendor and the Purchaser to the other and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties hereby agree and declare as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

Capitalized terms used herein shall have the definitions given to them in the preamble hereto and as follows unless the context expressly or by necessary implication otherwise requires:

“**Accounts Receivable**” means (i) all accounts receivable relating to the Property, For greater certainty, Accounts Receivable includes any rents and other amounts owing to the Debtors (or any of them) under the Leases, including without limitation any amounts owing as a result of the deferral of rents and other amounts due to the Debtor thereunder.

“**Agreement**” means this agreement of purchase and sale and the schedules attached hereto, as amended from time to time; “**Article**” and “**Section**” mean and refer to the specified article and section of this Agreement.

“**Applicable Laws**” means, with respect to any Person, property, transaction, event or other matter, any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law relating or applicable to the Subject Assets, such Person, property, transaction, event or other matter.

“**Alternative Transaction**” has the meaning ascribed thereto in Section 8.2(b).

“**Appointment Date**” means September 11, 2020.

“**Appointment Order**” has the meaning ascribed thereto in the Recitals.

“**Assignment and Assumption of Contracts**” means an assignment and assumption of the Assumed Contracts, such assignment and assumption to be delivered on Closing pursuant to Sections 6.1 and 6.2.

“**Assignment and Assumption of Leases**” means an assignment and assumption of the Leases to be delivered on Closing pursuant to Sections 6.1 and 6.2.

“**Assignment and Assumption of Permitted Encumbrances**” means an assignment and assumption of all of the right, title and interest, and all liability, covenants and obligations, of the Debtors in, to and under any Permitted Encumbrances not already subject to an Assignment and Assumption of Leases or an Assignment and Assumption of Contracts, to be delivered on Closing pursuant to Sections 6.1 and 6.2.

“**Assumed Contracts**” has the meaning ascribed thereto in Section 7.1.

“**Back-Up Bid**” has the meaning ascribed thereto in the Sale Procedure.

“**Buildings**” means, individually or collectively, as the context requires, all of the buildings, structures and fixed improvements located on, in or under the Lands, and improvements and fixtures contained in or on such buildings and structures used in the operation of same, but excluding those improvements and fixtures owned and used by any Tenant in carrying on its business and those improvements and fixtures which, in each case, are removable by any Tenant pursuant to its Lease; and “**Building**” means any one of the Buildings.

“**Business Day**” means any day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

“**Chattels**” means the right, title and interest of the Vendor and the Debtors in all of the tools, machinery, equipment, inventory and supplies located at the Property and used exclusively in connection with the operation, use, enjoyment, maintenance or management of the Property, if any but excluding the Excluded Assets and any such items owned by Tenants, licensees or independent contractors.

“**Claims**” means all past, present and future claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees on a solicitor and client basis and other professional fees and disbursements, interest, demands and actions of any nature or any kind whatsoever, whether known or unknown, and “**Claim**” means any one of the foregoing.

“**Closing**” means the closing and consummation of this Agreement for the Subject Assets including, without limitation, the payment of the Purchase Price and the delivery of the Closing Documents.

“**Closing Date**” means the date which is the day ten (10) business days following the obtaining by the Vendor of the Vesting Order or such other date as may be agreed upon by the parties in writing.

“**Closing Documents**” means the agreements, instruments and other documents to be delivered by the Vendor to the Purchaser pursuant to Section 6.1 and the agreements, instruments and other documents to be delivered by the Purchaser to the Vendor pursuant to Section 6.2.

“**Closing Certificate**” has the meaning ascribed thereto in Section 2.6.

“**Confidential Information**” has the meaning ascribed thereto in Section 2.4.

“**Consent**” means any approval, authorization, consent, order, license, permission, permit (including any environmental permit), qualification, exemption or waiver by any Governmental Authority or other Person.

“**Contract Notice Date**” has the meaning ascribed thereto in Section 7.1(a).

“**Contracts**” means, collectively, all contracts and agreements relating to the Property entered into by the Debtors or any manager or agent on behalf of the Debtors, or which have been assigned to the Debtors, or which otherwise bind and/or benefit the Debtors as owners of the Property, and includes, without limitation, the Warranties, but excludes the Leases and any contracts or agreements which are not assignable without the consent of the counterparty thereto.

“**Court**” has the meaning ascribed thereto in the Recitals.

“**Debtors**” means collectively, Yorkville Central Investments Inc., Yorkville Central 2 Investments Inc., and Yorkville Central 3 Investments Inc.

“**Deposit**” means a deposit in an amount equal to \$1,000,000.

“**Encumbrances**” means all mortgages, pledges, charges, including the Receiver’s Borrowings Charge and the Receiver’s Charge, liens, construction liens, debentures, hypothecs, trust deeds, assignments by way of security, security interests, options, equitable interest or beneficial interest, conditional sales contracts or other title retention agreements or similar interests or instruments charging, or creating a security interest in, or against title to, the Subject Assets or any part thereof or interest therein, including any Leases, easements, servitudes, rights of way, restrictions, any subdivision, site plan, development or other agreements with a Governmental Authority affecting the Property, executions, certificates of pending litigation or other charges or encumbrances (including notices or other registrations in respect of any of the foregoing) which encumber title to the Subject Assets or any part thereof or interest therein.

“**Environmental Laws**” means all Applicable Laws including written policies and guidelines and directives, administrative rulings or interpretations, that are in effect and applicable to the Property, as well as the common law and any judicial or administrative order, consent decree or judgment, now in existence or which may come into existence from the Execution Date until Closing, governing or regulating the use, generation, storage, removal, recovery, treatment, handling, transport, disposal, control, discharge of, or exposure to Hazardous Materials or intended to protect the environment, including, without limitation, the *Atomic Energy Control Act* (Canada), the *Canadian Environmental Protection Act* (Canada), the *Pest Control Products Act* (Canada), the *Transportation of Dangerous Goods Act* (Canada), the *Environmental Protection Act* (Ontario), the *Environmental Assessment Act* (Ontario), the *Ontario Water Resources Act* (Ontario) and the *Occupational Health & Safety Act* (Ontario), and the regulations and guidelines promulgated pursuant thereto or issued by any Governmental Authority in respect thereof, and equivalent or similar local and provincial ordinances and statutory programs and the regulations and guidelines promulgated pursuant thereto.

“**Excluded Assets**” means the assets listed in Schedule C.

“**Excluded Contracts**” means all Contracts other than the Assumed Contracts.

“**Execution Date**” means the date noted on page 1 of this Agreement.

“**Expense Reimbursement**” has the meaning set ascribed thereto in Section 8.2(b).

“**Final Order**” means, in respect of any order, such order after (i) the expiry of applicable appeal periods; or (ii) in the event of an appeal or application for leave to appeal or to stay, vary, supersede, set aside or vacate such order, final determination of such appeal or application by the applicable court or appellate tribunal.

“**Governmental Authority**” means any government, regulatory authority, government department, agency, utility, commission, board, tribunal, court or other rule making entity having jurisdiction on behalf of any nation, province or state or other subdivision thereof or any municipality, district or other subdivision thereof, or having jurisdiction over the relevant circumstances, or any person acting under the authority of any of the foregoing (including, without limitation, the Electrical Safety Authority, Municipal Property Assessment Corporation, or any arbitrator).

“**GST/HST**” has the meaning ascribed thereto in Section 5.3(b).

“**Hazardous Materials**” means any contaminant, substance, pollutant, waste, hazardous material, toxic substance, radioactive substance, petroleum, its derivatives, by-products and other hydrocarbons, dangerous substance or dangerous goods or material that is: (i) deemed hazardous or toxic under Environmental Laws; (ii) prohibited, controlled or regulated by any Governmental Authority pursuant to Environmental Laws; or (iii) present to a degree or in an amount in excess of thresholds regulated under Environmental Laws.

“**HST Act**” has the meaning ascribed thereto in Section 5.2(e).

“**Lands**” has the meaning ascribed thereto in the Recitals.

“**Leases**” means all offers to lease, sublease or sub-sublease, binding letters of intent and agreements to lease or sublease, leases, subleases, renewals and/or extensions of leases or subleases, amendments to any of the foregoing and other rights (including licences, concessions or occupancy agreements, parking and/or storage agreements and licences, telecom and/or satellite agreements and licences and solar panel leases or licences, but excluding rights in the nature of easements) granted by or on behalf of, or which bind the Debtors or its predecessors in title as lessor and which entitle any other Person as lessee to possess or occupy any space within the Property together with all security, guarantees and indemnities relating thereto, in each case as amended, renewed, extended or otherwise varied from time to time, and “**Lease**” means any one of the Leases.

“**Notice**” has the meaning ascribed thereto in Section 9.18.

“**Outside Date**” means January 31, 2021, or such later date as agreed to by the Parties.

“**Parties**” means the Vendor and the Purchaser, collectively, and “**Party**” means any one of them.

“**Permitted Encumbrances**” means all those Encumbrances described in Schedule B attached hereto.

“**Person**” means an individual, partnership (limited or general), corporation, trust, unincorporated organization, government or any department or agency thereof, and the successors and assigns thereof or the heirs, executors, administrators or other legal representatives of an individual.

“**Property**” means the Lands and the Buildings.

“**Purchase Price**” has the meaning ascribed thereto in Section 3.1.

“**Purchaser**” has the meaning ascribed thereto in the Recitals.

“**Purchaser’s GST/HST Certificate**” has the meaning ascribed thereto in Section 5.3(f).

“**Purchaser’s Solicitors**” means Harris, Sheaffer LLP or such other firm or firms of solicitors or agents as are retained by the Purchaser from time to time and Notice of which is provided to the Vendor.

“**Receiver**” has the meaning ascribed thereto in the Recitals.

“**Receiver’s Borrowings Charge**” has the meaning given in paragraph 20 of the Appointment Order and as used therein.

“**Receiver’s Charge**” has the meaning given in paragraph 17 of the Appointment Order and as used therein.

“**Receiver’s Website**” means <http://www.rsmcanada.com/avenue-road-properties>

“**Receivership Proceeding**” means the receivership proceeding with respect to the Avenue Road Properties commenced by the Appointment Order.

“**Sale Procedure**” means the sale procedure approved by the Court substantially in the form attached hereto as Schedule D hereto, authorizing the Receiver to enter into this Agreement, approving the sale of the Subject Assets to the Purchaser as contemplated by this Agreement and, in particular, the Purchase Price, as a baseline or “stalking horse” bid, and setting out the terms and conditions of a timetable for a sale process with respect to the Subject Assets, with such amendments as are satisfactory to the Receiver and Purchaser acting reasonably.

“**Sale Procedure Order**” means an order of the Court substantially in the form attached as Schedule E hereto;

“**Subject Assets**” means all the right, title and interest of the Receiver, and the Debtors, in and to the tangible and intangible properties, assets, interests, rights and claims related to the Property wherever located, as of the Closing Date including without limitation the following assets, if any:

- (a) the Property;
- (b) the Leases;
- (c) the Assumed Contracts;
- (d) the Permitted Encumbrances;

- (e) the Chattels;
- (f) the Accounts Receivable; and
- (g) all other personal property not contemplated by the foregoing,

but excludes the right, title and interest of the Receiver and the Debtor in and to the Excluded Assets and the Excluded Contracts.

“**Successful Bid**” has the meaning given to it in the Sale Procedure.

“**Successful Bidder**” has the meaning given to it in the Sale Procedure.

“**Tenants**” means all Persons or parties having a right to occupy any rentable area of the Property pursuant to a Lease; and “**Tenant**” means any one of such Tenants.

“**Transaction**” means the purchase and sale of the Subject Assets provided for in this Agreement.

“**Vendor**” means the Receiver.

“**Vendor’s Solicitors**” means Garfinkle Biderman LLP or such other firm or firms of solicitors or agents as are retained by the Vendor from time to time and Notice of which is provided to the Purchaser.

“**Vesting Order**” means the order of the Court approving the sale by the Receiver to the Purchaser of the Subject Assets, and vesting all right, title and interest of the Debtors in the Subject Assets, free and clear of all Encumbrances (other than Permitted Encumbrances), substantially in the form attached hereto as Schedule F, with such amendments as are satisfactory to the Receiver and Purchaser acting reasonably.

“**Vesting Order Motion**” means a motion by the Receiver seeking the granting of the Vesting Order.

“**Warranties**” means any existing warranties and guarantees in favour of the Debtors in connection with the construction, condition or operation of the Buildings or any component thereof or any improvements made to the Buildings or any component thereof which are assignable without the consent of the counterparty thereto.

1.2 Schedules

The following schedules attached hereto form part of this Agreement:

- Schedule A - Lands
- Schedule B - Permitted Encumbrances
- Schedule C - Excluded Assets
- Schedule D - Sale Procedure

- Schedule E - Sale Procedure Order
- Schedule F - Form of Vesting Order

1.3 Computation of Time Periods

Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period. If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited shall extend to the next following Business Day.

ARTICLE 2 AGREEMENT OF PURCHASE AND SALE

2.1 Purchase and Sale of the Subject Assets

Upon and subject to the terms and conditions of this Agreement, the Vendor agrees to sell, and the Purchaser agrees to purchase, the Subject Assets, pursuant to the Vesting Order, in consideration of the payment of the Purchase Price. This Agreement shall be completed on the Closing Date at the offices of the Vendor's Solicitors subject to the terms and conditions of this Agreement, which conditions, for greater certainty, include the determination by the Receiver that this Agreement is the Successful Bid, and the issuance of the Vesting Order.

2.2 Binding Agreement

The agreements of the Vendor and the Purchaser set forth in Section 2.1 create and constitute a binding agreement of purchase and sale for the Subject Assets in accordance with and subject to the terms and conditions of this Agreement.

2.3 Acknowledgement of Purchaser as to Condition of the Subject Assets

Notwithstanding the foregoing or anything else contained herein or elsewhere, the Purchaser acknowledges and agrees that:

- (a) The Subject Assets are being sold and purchased and the Transaction is being effected, on an "as-is, where-is" basis, without any representation, warranty or covenant by the Vendor or any other Person concerning the Subject Assets, or the Receiver's or the Debtors' right, title or interest in or to the Subject Assets, or the uses or applications of the Subject Assets, whether express or implied, statutory or collateral, arising by operation of law or otherwise, including express or implied warranties of merchantability, fitness for a particular purpose, the existence or non-existence of Hazardous Materials, compliance with any or all Environmental Laws, title, description, quantity, condition or quality, and that any and all conditions and warranties expressed or implied by the *Land Registration Reform Act* (Ontario) or the *Sale of Goods Act* (Ontario) do not apply to the sale of the Subject Assets and are hereby waived by the Purchaser.

- (b) The Purchaser acknowledges that it has performed due diligence, inquiries and investigations in respect of the Subject Assets and relies solely upon its own findings resulting therefrom and not upon any information, documentation, statement or opinion, written or oral, provided by the Vendor or any agent of the Vendor other than and only to the extent of the representations and warranties set out in Section 5.1.
- (c) The Vendor makes no representations or warranties, other than and only to the extent of the representations and warranties set out in Section 5.1, of any nature whatsoever with respect to any Confidential Information or documentation disclosed to the Purchaser, nor with respect to the Subject Assets (including, without limitation, title thereto and/or the state of any Encumbrances) or the Transaction.
- (d) As part of the Purchaser's agreement to purchase the Subject Assets and to accept the Subject Assets in "as-is, where-is" condition, and not as a limitation on such agreement, the Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights or Claims the Purchaser might have against the Vendor pursuant to any warranty, express or implied, of any kind or type relating to the Subject Assets or any other assets, the Property conditions or any other aspect of the Transaction. Such waiver is absolute, unlimited and includes, but is not limited to, waiver of express warranties, implied warranties, any warranties at law and/or in equity, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and Claims of every kind and type, including, but not limited to, Claims regarding defects or the existence or non-existence of Hazardous Materials, whether or not discoverable, Claims pertaining to compliance with any Environmental Laws, product liability Claims, or similar Claims, and to all other extent or later created or conceived of strict liability or strict liability type Claims and rights.
- (e) The Vendor shall not be responsible or liable for any misrepresentation, lack of disclosure or incorrect or incomplete disclosure of any nature whatsoever or failure to investigate the Subject Assets on the part of any broker or sales agent, or any other purported or acknowledged agent, representative, contractor, consultant or employee of the Vendor or any third party.
- (f) The Vendor shall not be required to produce any abstract of title, deed or documents or copies thereof or any evidence as to title.
- (g) The transfer of title to the Subject Assets may be subject to certain work orders, municipal requirements, including building or zoning by-laws and regulations, easements for hydro, gas, telephone affecting the Subject Assets, and like services to the Property, and restrictions and covenants which run with the land, including but not limited to the Permitted Encumbrances. Without limiting the foregoing, the Vendor shall not be responsible for rectification of any matters disclosed by any Governmental Authority.

The provisions of this Section 2.3 shall not merge on, but shall survive, Closing.

2.4 Confidentiality

- (a) Except as may be required in connection with the Receivership Proceeding, until Closing (and in the event this Agreement is terminated for any reason other than its completion, then also from and after such termination), the Purchaser and its consultants, agents, representatives, advisors, partners, solicitors, lenders and prospective lenders and their respective solicitors shall keep confidential all information, documentation and records obtained from the Vendor or its consultants, agents, representatives, advisors or solicitors with respect to the Subject Assets, as well as any information arising out of the Purchaser's access to the Vendor's and/or the Debtors' records and the Subject Assets and the Purchaser's own due diligence with respect thereto (collectively, the "**Confidential Information**"). The Purchaser shall not use any Confidential Information for any purposes not related to this Transaction or in any way detrimental to the Debtors or the Vendor. Nothing herein contained shall restrict or prohibit the Purchaser from disclosing the Confidential Information to its consultants, agents, representatives, advisors, partners, solicitors, lenders and prospective lenders and their respective solicitors so long as the Purchaser instructs such parties to keep such information confidential.
- (b) The Confidential Information referred to in this Section shall not include:
- i) public information or information in the public domain at the time of receipt by the Purchaser or its consultants, agents, advisors, partners and solicitors;
 - ii) information which becomes public through no fault or act of the Purchaser or its consultants, agents, advisors, partners and solicitors;
 - iii) information required to be disclosed by law; or
 - iv) information received in good faith from a third party lawfully in possession of the information and not in breach of any confidentiality obligations.
- (c) If this Agreement is terminated for any reason, the Purchaser shall promptly return to the Vendor, or destroy (and provide a certificate of an officer of the Purchaser certifying such destruction), all Confidential Information (other than the Purchaser's notes and due diligence materials) and similar material including all copies, and shall destroy all of the Purchaser's notes and due diligence materials in hard or soft copy containing Confidential Information related to this Transaction (and provide a certificate of an officer of the Purchaser certifying such destruction). The Purchaser shall also cause all of its consultants, agents, representatives, advisors, partners, solicitors, lenders and prospective lenders and their respective solicitors to comply with the terms of this Section 2.4(c) and to certify such compliance to the Vendor.
- (d) Notwithstanding anything herein to the contrary, the Receiver shall be entitled to disclose this Agreement and all information provided by the Purchaser in

connection herewith to the Court, to the parties in interest to the proceedings in connection with the receivership of the Avenue Road Properties, and to any parties entitled to access in accordance with the Sale Procedure, and to publish this Agreement on the Receiver's Website.

2.5 Sale Procedure Order, Vesting Order

- (a) The Receiver and the Purchaser acknowledge that (i) this Agreement is subject to Court approval, and (ii) Closing of the Transaction is subject to this Agreement being determined by the Receiver to be the Successful Bid, and to the issuance of the Vesting Order.
- (b) The Receiver shall use its commercially reasonable efforts to obtain the Sale Procedure Order on or before October 23, 2020, or such other date on which the Parties agree.
- (c) If this Agreement is determined to be the Successful Bid pursuant to the Sale Procedure, the Receiver shall use its commercially reasonable efforts to promptly thereafter file and serve the Vesting Order Motion, on notice to the necessary parties.
- (d) The Purchaser shall provide all information, if any, and take such actions as may be reasonably requested by the Receiver to assist the Receiver in obtaining the Sale Procedure Order, and if the Purchaser is the Successful Bidder, the Purchaser shall provide all information, if any, and take such actions as may be reasonably requested by the Receiver to assist the Receiver in obtaining the Vesting Order, and any other order of the Court reasonably necessary to consummate the Transaction.
- (e) From and after the Execution Date, the Receiver shall provide such prior notice as may be reasonable under the circumstances before filing any materials with the Court that relate, in whole or in part, to this Agreement, the Purchaser, or the Vesting Order and shall consult in good faith with the Purchaser regarding the content of such materials prior to any such filing (provided that the Receiver shall not be obligated to incorporate the comments of the Purchaser into any such filings).

2.6 Closing Certificate

The Parties hereby acknowledge and agree that the Receiver shall be entitled to file with the Court a certificate, substantially in the form attached to the Vesting Order (the "**Closing Certificate**") upon receiving written confirmation from the Purchaser that all conditions to Closing under this Agreement have been satisfied or waived. The Receiver shall have no liability to the Purchaser or any other person as a result of filing the Closing Certificate.

2.7 Receiver's Capacity

The Purchaser acknowledges and agrees that in all matters pertaining to the Sale Procedure, this Agreement, including in its execution, the Receiver has acted and is acting solely in its capacity as receiver and manager of the Avenue Road Properties pursuant to the Appointment Order and not

in its personal, corporate, or any other capacity and the Receiver and its agents, officers, directors, employees and representatives will have no personal or corporate liability under or as a result of this Agreement, or otherwise in connection herewith.

ARTICLE 3 PURCHASE PRICE

3.1 Purchase Price

- (a) The Purchase Price payable by the Purchaser to the Vendor for the Subject Assets, exclusive of GST/HST where applicable, shall be equal to \$16,100,000.00 (the “**Purchase Price**”).
- (b) On the Closing Date, the Purchase Price shall be paid and satisfied as follows:
 - i) as to the amount of the Deposit received by the Vendor, by application of such amount; and
 - ii) subject to adjustment in accordance with Section 3.4, by the Purchaser paying to the order of the Vendor by way of wire transfer in immediately available funds, the balance of the Purchase Price.

3.2 Deposit

Within two Business Days after the Execution Date, the Purchaser shall pay the Deposit to the Vendor’s Solicitors. The Deposit shall be held, pending Closing, by the Vendor’s Solicitors in a non-interest bearing trust account at one of the five (5) largest Schedule I Canadian chartered banks. The Deposit shall be dealt with in the following manner:

- i) if the Transaction is completed, the Deposit will be applied against the Purchase Price payable on the Closing Date;
- (a) if the Transaction is not completed due to the failure of the Vendor to complete any of its obligations as set out in the Agreement, or if any of the conditions for the benefit of the Purchaser (including those conditions for the mutual benefit of the Vendor and Purchaser) as set out in this Agreement have not been met and are not waived, or if this Agreement is terminated under Subsection 8.1(a), (b), (c), (d) or (f), then the Deposit will be released from trust and returned to the Purchaser or Purchaser’s Counsel via wire transfer on the Closing Date; or
- (b) if the Transaction is not completed for any reason other than as set out in Subsection 3.2(b), then the Deposit will be released from trust and forfeited and paid to the Vendor, or as the Vendor may otherwise direct, as liquidated damages. The Vendor retains its right to claim any additional damages and/or pursue all other available remedies arising from the Transaction not being completed for such reason.

3.3 Purchase Price Allocation

The allocation of the Purchase Price in respect of each of the Subject Assets shall be made by each of the Purchaser and the Vendor, both acting reasonably, for itself, on or before Closing.

3.4 Adjustments

- (a) The Purchase Price will be adjusted as of the Closing Date (with the Closing Date being allocated to the Purchaser) for all items that are adjusted in accordance with usual commercial practice for adjustment between a vendor and purchaser with respect to the purchase and sale of a comparable property in Ontario, including, without limitation, rent, deposits and security deposits paid by Tenants, realty taxes and utilities, and payments under equipment rental agreements, the Vendor being responsible for all expenses and entitled to all income related to the Property in respect of the period prior to the Closing Date and the Purchaser being responsible for all expenses and entitled to all income related to the Property in respect of the period from and including the Closing Date, in each case except as otherwise provided herein.
- (b) The Vendor shall prepare a statement of adjustments in accordance with this Section 3.4 and deliver it to the Purchaser at least two (2) Business Days prior to the Closing Date. If the adjustment amount for any item was an initial adjustment or was omitted from the statement of adjustments at Closing, such item will be re-adjusted or adjusted, as the case may be, after Closing on or before the date that is two (2) months after the Closing Date. There shall be no adjustments after two months after the Closing Date.
- (c) Any refund or rebate of realty tax relating to the Property in respect of the period before the Closing Date (each, a “**Property Tax Refund**”) received by the Vendor after Closing shall be retained by the Vendor. Any refund or rebate of realty tax relating to the Property in respect of the period after the Closing Date will be the property of the Purchaser.

ARTICLE 4 CONDITIONS

4.1 Conditions for Vendor

The obligation of the Vendor to complete the Transaction shall be subject to the following conditions:

- (a) on the Closing Date, all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser shall have been complied with or performed in all material respects;
- (b) on the Closing Date, all of the representations and warranties of the Purchaser set out in Section 5.2 shall be true and accurate in all material respects as if made as of the Closing;

- (c) on Closing, receipt of all deliveries to be made by the Purchaser as set out in Section 6.2;
- (d) on the Closing Date, there shall be no order issued by any Governmental Authority delaying, restricting or preventing, and no pending Claim or judicial or administrative proceeding, or investigation against any Party by any Person, for the purpose of enjoining, delaying, restricting or preventing, the consummation of the Transaction or otherwise claiming that this Agreement or the consummation of such Transaction is improper or would give rise to proceedings under any Applicable Laws;
- (e) on the Closing Date, the Receiver shall have determined in accordance with the Sale Procedure that this Agreement is the Successful Bid; and
- (f) on the Closing Date, the Appointment Order, the Sale Procedure Order and the Vesting Order shall be Final Orders and no order shall have been issued which restrains or prohibits the completion of the Transaction.

The conditions set forth in this Section 4.1 are for the sole benefit of the Vendor and may be waived in whole or in part by the Vendor by Notice in writing to the Purchaser prior to the applicable date set forth above for their respective waiver or satisfaction.

4.2 Conditions for Purchaser

The obligation of the Purchaser to complete the Transaction shall be subject to the following conditions:

- (a) on the Closing Date, all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor shall have been complied with or performed in all material respects;
- (b) on the Closing Date, all of the representations and warranties of the Vendor set out in Section 5.1 shall be true and accurate in all material respects as if made as of the Closing (except as such representations and warranties may be affected by the occurrence of events or transactions expressly contemplated and permitted by this Agreement or the Sale Procedure);
- (c) on Closing, receipt of all deliveries to be made by the Vendor as set out in Section 6.1;
- (d) on the Closing Date, there shall be no Order issued by any Governmental Authority delaying, restricting or preventing, and no pending Claim or judicial or administrative proceeding, or investigation against any Party by any Person, for the purpose of enjoining, delaying, restricting or preventing, the consummation of the Transaction or otherwise claiming that this Agreement or the consummation of such Transaction is improper or would give rise to proceedings under any Applicable Laws;

- (e) on the Closing Date, the Appointment Order, the Sale Procedure Order and the Vesting Order shall be Final Orders and no order shall have been issued which restrains or prohibits the completion of the Transaction; and
- (f) on the Closing Date, the Receiver shall have determined in accordance with the Sale Procedure that this Agreement is the Successful Bid.

The conditions set forth in this Section 4.2 are for the sole benefit of the Purchaser, and may be waived in whole or in part by the Purchaser by Notice to the Vendor prior to the applicable date set forth above for the waiver or satisfaction of each such condition.

4.3 Satisfaction of Conditions

Each Party agrees to proceed in good faith, with promptness and reasonable diligence to attempt to satisfy those conditions contained in Sections 4.1 and 4.2, as applicable, that are within its control, acting reasonably. The Parties shall cooperate with each other and the Purchaser shall provide the Vendor with information in its possession or control necessary to seek the Sale Procedure Order and the Vesting Order. Each Party shall promptly notify the other of the occurrence, to such Party's knowledge, of any event or condition, or the existence, to such Party's knowledge, of any fact, that would reasonably be expected to result in any of the conditions set forth in Section 4.1 or Section 4.2 not being satisfied.

4.4 Non-Satisfaction of Conditions

- (a) If any of the conditions set out in Section 4.1 are not satisfied or waived on or before the Closing Date, the Vendor may terminate this Agreement by Notice in writing to the Purchaser given on the Closing Date in which event this Agreement shall be terminated and of no further force or effect whatsoever, and each of the Parties shall be released from all of its liabilities and obligations under this Agreement save for those specified to survive termination, and any Deposit shall be returned in accordance with Section 3.2 (except as provided in Section 3.2(c)). However, the Vendor may waive compliance with any of the conditions set out in Section 4.1 in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Section 4.1 in whole or in part.
- (b) If any of the conditions set out in Section 4.2 are not satisfied or waived on or before the Closing Date, the Purchaser may terminate this Agreement by Notice in writing to the Vendor given on or before the Closing Date, in which event this Agreement shall be terminated and of no further force or effect whatsoever, and each of the Parties shall be released from all of its liabilities and obligations under this Agreement save for those specified to survive termination, and any Deposit shall be returned in accordance with Section 3.2. However, the Purchaser may waive compliance with any of the conditions set out in Section 4.2 in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition contained in Section 4.2 in whole or in part.

- (c) All conditions to be satisfied on Closing shall be deemed to be satisfied if Closing occurs.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties of Vendor

The Vendor represents and warrants to and in favour of the Purchaser that as of the date of this Agreement:

- (a) Status. The Vendor has been appointed by the Court as receiver and manager of the Avenue Road Properties pursuant to the Appointment Order, a copy of which is available on the Receiver's Website.
- (b) Authorization. Subject to the issuance of the Sale Procedure Order, the Receiver has all necessary power and authority to enter into this Agreement.
- (c) Enforceability. Subject to the issuance of the Vesting Order, this Agreement constitutes a valid and binding obligation of the Receiver enforceable against it in accordance with its terms subject to any limitations imposed by Applicable Laws, and the Receiver has the necessary power and authority to carry out its obligations hereunder.
- (d) Residence. The Vendor is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

5.2 Representations and Warranties of Purchaser

The Purchaser covenants, represents and warrants to and in favour of the Vendor that, as of the date of this Agreement:

- (a) Status. The Purchaser is duly organized and subsisting under the laws of its jurisdiction of organization. The Purchaser has all necessary power, authority and capacity to enter into this Agreement and all other agreements contemplated by this Agreement and to perform its obligations under this Agreement and all other agreements contemplated by this Agreement.
- (b) Authorization. The execution and delivery of this Agreement and all other agreements contemplated by this Agreement by the Purchaser and the consummation of the Transaction contemplated by this Agreement by the Purchaser have been duly authorized by all necessary corporate action on the part of the Purchaser.
- (c) Enforceability. This Agreement constitutes a valid and binding obligation of the Purchaser enforceable against it in accordance with its terms subject to any limitations imposed by Applicable Laws.

- (d) No Breach. Neither the entering into nor the delivery of this Agreement nor the completion by the Purchaser of the Transaction contemplated hereby will conflict with, or constitute a default under, or result in a violation of: (i) any of the provisions of the constating documents or by-laws of the Purchaser; or (ii) any Applicable Laws.
- (e) No Bankruptcy. The Purchaser: (i) is not an insolvent Person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) or the *Winding-up and Restructuring Act* (Canada); (ii) has not made an assignment in favour of its creditors or a proposal to its creditors or any class thereof; (iii) has not had any application for a bankruptcy order filed or presented in respect of it; and (iv) has not initiated proceedings with respect to a compromise or arrangement with its creditors or for its winding up, liquidation or dissolution.
- (f) GST/HST. The Purchaser will on Closing be a GST/HST registrant, as the case may be, under the *Excise Tax Act* (Canada) (the “**HST Act**”) and be the sole “recipient” of a supply as defined thereunder and will provide its registration number to the Vendor on or before the Closing Date.
- (g) Residence. The Purchaser is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

5.3 GST/HST

The Purchaser hereby represents and warrants to the Vendor as follows:

- (a) the Purchaser shall be purchasing the Subject Assets on the Closing Date, as principal for its own account and not as an agent, trustee or otherwise on behalf of another person;
- (b) the Purchaser shall be registered under subdivision d of Division V of Part IX of the HST Act for the purposes of collection and remittance of harmonized sales tax or goods and services tax, as the case may be (“**GST/HST**”);
- (c) the Purchaser shall be liable, shall self-assess and remit to the appropriate governmental authority all GST/HST which is payable under the HST Act in connection with the transfer of the Subject Assets made pursuant to the Agreement, all in accordance with the HST Act;
- (d) the Vendor shall not collect GST/HST on Closing regarding the Subject Assets and shall allow the Purchaser to self-assess and remit GST/HST to the Receiver General in accordance with the HST Act;
- (e) the Purchaser shall indemnify and save harmless the Vendor from and against any and all GST/HST, penalties, costs and/or interest which may become payable by or assessed against the Vendor as a result of the Transaction or any inaccuracy, misstatement or misrepresentation made by the Purchaser on the Closing Date in connection with any matter raised in this Section 5.3 or contained in any declaration referred to herein; and

- (f) the Purchaser shall tender on Closing a certificate and indemnity including verification of its registration number issued by Canada Revenue Agency under the HST Act or *Income Tax Act* (Canada) (the “**Purchaser’s GST/HST Certificate**”).

ARTICLE 6 CLOSING DOCUMENTS

6.1 Vendor’s Closing Documents

At Closing, the sale, transfer, assignment, and conveyance by the Vendor of the Subject Assets to the Purchaser, free and clear of all Encumbrances other than Permitted Encumbrances, shall be effected by the issued and entered Vesting Order. On or before Closing, subject to the provisions of this Agreement, the Vendor shall prepare and execute or cause to be executed and shall deliver or cause to be delivered to the Purchaser the following:

- (a) a true and complete copy of the Vesting Order;
- (b) the Closing Certificate;
- (c) the Assignment and Assumption of Leases and other assignment, assumption and other documents as are required by the terms of the Leases;
- (d) the Assignment and Assumption of Contracts and other assignment, assumption and other documents as are required by the terms of the Assumed Contracts;
- (e) the Assignment and Assumption of Permitted Encumbrances, and such other assignment, assumption or other documents as are required by the terms of the Permitted Encumbrances;
- (f) a notice to all Tenants advising of the sale of the Property and directing that all rents payable after Closing be paid to the Purchaser or as the Purchaser directs;
- (g) a certificate of an officer of the Vendor (in such capacity and without personal liability) confirming that the representations and warranties set out in Section 5.1 are true and accurate in all material respects;
- (h) to the extent in the Vendor’s possession or control, all keys to the Buildings, all security cards relating to the Property, and combination locks located at the Property;
- (i) to the extent in the Vendor’s possession or control, original copies of all Leases, all Assumed Contracts, if any, Building records and Tenant files;
- (j) to the extent in the Vendor’s possession or control, all post-dated rental cheques endorsed (without recourse) in favour of the Purchaser;
- (k) the statement of adjustments; and

- (l) an undertaking by the Vendor to re-adjust the adjustments in accordance with Section 3.4(b).

All documentation shall be in form and substance acceptable to the Purchaser and the Vendor, each acting reasonably and in good faith, provided that none of such documents shall contain covenants, representations or warranties which are in addition to or more onerous upon either the Vendor or the Purchaser than those expressly set forth in this Agreement.

6.2 Purchaser's Closing Documents

On or before Closing, subject to the provisions of this Agreement, the Purchaser shall execute or cause to be executed and shall deliver or cause to be delivered to the Vendor, as applicable, the following:

- (a) the balance due on Closing under Paragraph 3.1(b)ii);
- (b) a document setting out the allocation of the Purchase Price;
- (c) the Assignment and Assumption of Leases, and other assignment, assumption and other documents as are required by the terms of the Leases;
- (d) the Assignment and Assumption of Contracts, and other assignment, assumption and other documents as are required by the terms of the Assumed Contracts;
- (e) the Assignment and Assumption of Permitted Encumbrances, and other assignment, assumption and other documents as are required by the terms of the Permitted Encumbrances;
- (f) a certificate of an officer of the Purchaser (in such capacity and without personal liability) confirming that the representations and warranties set out in Section 5.2 are true and accurate in all material respects;
- (g) the Purchaser's GST/HST Certificate;
- (h) an acknowledgement in favour of the Vendor confirming that each of the Purchaser's conditions as set out in Section 4.2 have been satisfied or waived;
- (i) an undertaking by the Purchaser to re-adjust the adjustments in accordance with Section 3.4(b); and
- (j) such other documents as may be reasonably required by the Vendor to complete the purchase and sale of the Subject Assets.

All documentation shall be in form and substance acceptable to the Purchaser and the Vendor each acting reasonably and in good faith, provided that none of such documents shall contain covenants, representations or warranties which are in addition to or more onerous upon either the Vendor or the Purchaser than those expressly set forth in this Agreement.

6.3 Registration and Other Costs

- (a) The Vendor shall be responsible for the costs of the Vendor's Solicitors in respect of this Transaction. The Purchaser shall be responsible for the costs of the Purchaser's Solicitors in respect of this Transaction. The Purchaser shall be responsible for and pay any land transfer taxes payable on the transfer of the Property, all registration fees payable in respect of registration by it of any documents on Closing and all federal and provincial sales and other taxes payable by a purchaser upon or in connection with the conveyance or transfer of the Subject Assets, including provincial retail sales tax, goods and services tax and Harmonized Sales Tax.
- (b) The Purchaser shall indemnify and save harmless the Vendor and its shareholders, directors, officers, employees, advisors, representatives and agents from all claims, actions, causes of action, proceedings, losses, damages, costs, liabilities and expenses incurred, suffered or sustained as a result of a failure by the Purchaser:
 - i) to pay any federal, provincial or other taxes payable by the Purchaser in connection with the conveyance or transfer of the Subject Assets whether arising from a reassessment or otherwise, including provincial retail sales tax, goods and services tax and Harmonized Sales Tax, if applicable; and/or
 - ii) to file any returns, certificates, filings, elections, notices or other documents required to be filed by the Purchaser with any federal, provincial or other taxing authorities in connection with the conveyance or transfer of the Subject Assets.
- (c) This Section shall survive and not merge on Closing.

6.4 Closing Escrow

All Closing Documents shall be delivered into escrow at the place of Closing on or before the Closing Date. Such Closing Documents shall be held by the Vendor's Solicitors in escrow until both Parties, acting reasonably, are satisfied that all conditions set forth in Sections 4.1 and 4.2 to be satisfied on or before Closing have been satisfied (or waived).

Upon successful registration of the Vesting Order, the Closing Documents shall be released from escrow.

6.5 Post-Closing Receipt of Rent Arrears

From and after the Closing Date until the completion of the Receivership Proceeding, the Vendor shall promptly transfer any cash, cheques or other instruments of payment to the Purchaser that it receives payable to the Debtors, or payable to the Receiver, in respect of the Subject Assets, including rent arrears under any Leases.

ARTICLE 7
ASSUMED CONTRACTS

7.1 Contracts

- (a) On Closing, the Purchaser shall assume those Contracts that the Purchaser advises the Vendor it wants to assume (the “**Assumed Contracts**”) by Notice delivered to the Vendor no later than ten (10) Business Days prior to the return date of the Vesting Order Motion (the “**Contract Notice Date**”). At any time on or prior to the Contract Notice Date, the Purchaser may elect to exclude any Contracts from the Subject Assets, and add such Contracts to the Excluded Contracts list by giving written notice to the Vendor of its intention to do so.
- (b) Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Contract, to the extent such Contract is not assignable under Applicable Law without the consent of any other Person or party thereto where the Consent of such Person has not been given or received.
- (c) The Vendor shall terminate on or before the Closing Date, all Contracts other than the Assumed Contracts.
- (d) At or prior to Closing, the Purchaser, with the Vendor’s assistance as may be reasonably required, shall use commercially reasonable efforts to obtain all necessary Consents to assign the Assumed Contracts to the Purchaser. The Purchaser shall assume the Assumed Contracts, to the extent they are assignable and in force on Closing, pursuant to the Assignment and Assumption of Contracts.

ARTICLE 8
TERMINATION

8.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

- (a) automatically and without any action or notice by either the Vendor to the Purchaser or the Purchaser to the Vendor, immediately (i) if the Sale Procedure Order is not granted by the Court by October 23, 2020, or such other date on which the parties may agree, (ii) upon the selection by the Receiver of a Successful Bid if this Agreement is neither the Successful Bid nor the Back-Up Bid selected at such time, or (iii) upon the Closing of the Successful Bid if this Agreement is the Back-Up Bid;
- (b) subject to any approvals required from the Court, if any, by mutual written consent of the Vendor and the Purchaser;
- (c) by notice from the Vendor to the Purchaser or from the Purchaser to the Vendor, following the issuance of an order or any other action by a Governmental Authority to restrain, enjoin or otherwise prohibit the transfer of the Subject Assets as contemplated hereby;

- (d) automatically and without any action by either the Vendor or the Purchaser if Closing has not occurred on or before the Outside Date;
- (e) by the Vendor, if there has been a material violation or breach by the Purchaser of any agreement, covenant, representation or warranty which would prevent the satisfaction of any condition set forth this Agreement and such violation or breach has not been waived by the Vendor or cured, unless the Vendor is in material breach of its obligations under this Agreement; and
- (f) by the Purchaser, if there has been a material violation or breach by the Vendor of any agreement, covenant, representation or warranty which would prevent the satisfaction of any condition set forth in this Agreement and such violation or breach has not been waived by the Purchaser or cured, unless the Purchaser is in material breach of its obligations under this Agreement.

8.2 Effects of Termination

- (a) If this Agreement is terminated pursuant to Section 8.1:
 - i) except in the case of a termination pursuant to Subsection 8.1(e), the Deposit shall be returned to the Purchaser;
 - ii) all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other; subject to the Expense Reimbursement set out in Section 8.2(b); and
 - iii) the Purchaser shall return to the Receiver all documents, work papers and other material of the Receiver and the Debtors, as the case may be, relating to the Transaction, whether obtained before or after the execution hereof.
- (b) In consideration for the Purchaser's expenditure of time and money in acting as the initial bidder in the stalking horse bid and the preparation and negotiation of this Agreement and subject to the terms and conditions of this Agreement and of the Sale Procedure Order, upon termination of this Agreement by the Receiver (except any termination pursuant to Subsection 8.1(e)) or the closing of a sale and a transfer of the Subject Assets to a Person other than the Purchaser (an "**Alternative Transaction**"), the Receiver shall pay to the Purchaser the amount of \$385,000 (the "**Expense Reimbursement**") in order to reimburse the Purchaser for the Purchaser's expenses in connection with the Transaction, provided that the Receiver's obligation to make such payment is conditional upon an Alternative Transaction being completed, whereupon such payment may be made from the proceeds of the Alternative Transaction.
- (c) Payment of the Expense Reimbursement shall be made by the Receiver upon Court approval of said payment after consummation of the Alternative Transaction. Upon payment of the Expense Reimbursement to the Purchaser, the Parties shall have no further obligations under this Agreement.

ARTICLE 9 GENERAL

9.1 Gender and Number

Words importing the singular include the plural and vice versa. Words importing gender include all genders.

9.2 Captions and Table of Contents

The captions, headings and table of contents contained herein are for reference only and in no way affect this Agreement or its interpretation.

9.3 Obligations as Covenants

Each agreement and obligation of any of the Parties in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.

9.4 Applicable Law

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

9.5 Currency

All reference to currency in this Agreement shall be deemed to be reference to Canadian dollars.

9.6 Invalidity

If any immaterial covenant, obligation, agreement or part thereof or the application thereof to any Person or circumstance, to any extent, shall be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or agreement or part thereof to any Person, party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby. Each covenant, obligation and agreement in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

9.7 Amendment of Agreement

Except as expressly provided otherwise in this Agreement, no supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the Parties in the same manner as the execution of this Agreement.

9.8 Time of the Essence

Time shall be of the essence of this Agreement.

9.9 Further Assurances

Each of the Parties shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.

9.10 Entire Agreement

This Agreement and any agreements, instruments and other documents herein contemplated to be entered into between, by or including the Parties constitute the entire agreement between the Parties pertaining to the agreement of purchase and sale provided for herein and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, with respect thereto, and there are no other warranties or representations and no other agreements between the Parties in connection with the agreement of purchase and sale provided for herein except as specifically set forth in this Agreement or the Schedules attached hereto.

9.11 Waiver

No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided.

9.12 Solicitors as Agents and Tender

Any Notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement (including, without limitation, any agreement to amend this Agreement) may be given or delivered and accepted or received by the Purchaser's Solicitors on behalf of the Purchaser and by the Vendor's Solicitors on behalf of the Vendor and any tender of Closing Documents may be made upon the Vendor's Solicitors and the Purchaser's Solicitors, as the case may be.

9.13 Merger

Except as otherwise expressly set out herein, this Agreement shall merge with the Closing of the Transaction contemplated herein.

9.14 Successors and Assigns

All of the covenants and agreements in this Agreement shall be binding upon the Parties and their respective successors and permitted assigns and shall enure to the benefit of and be enforceable by the Parties and their respective successors and their permitted assigns pursuant to the terms and conditions of this Agreement.

9.15 Access of Receiver to Books and Records

The Vendor shall, for a period of six (6) years from the completion of the Transaction, have access to the Books and Records relating to the Avenue Road Properties and the Subject Assets which are transferred and conveyed to the Purchaser pursuant to this Agreement, and the right to copy

such material at its own cost, to the extent necessary or useful in connection with the completion of the administration of the Receivership Proceeding.

9.16 Tax Matters

The Purchaser and the Vendor agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Subject Assets as is reasonably necessary for the preparation and filing of any tax return, claim for refund or other required or optional filings relating to tax matters, for the preparation for and proof of facts during any tax audit, for the preparation for any tax protest, for the prosecution of any suit or other proceedings relating to tax matters and for the answer to any governmental or regulatory inquiry relating to tax matters.

9.17 Assignment

The Purchaser shall have the right to assign this Agreement, without the consent of the Vendor but on written notice to the Vendor upon such assignment taking place, which assignment must take place not less than five (5) days before the issuance of the Vesting Order, to an affiliate (as such term is defined in the *Canada Business Corporations Act*) of the Purchaser, provided in the case of such assignment that the assignee executes and delivers an agreement in favour of the Vendor agreeing to be bound by all obligations of the Purchaser hereunder. The Purchaser shall not otherwise assign its rights and/or obligations hereunder without the prior written consent of the Vendor, which consent may be unreasonably withheld in the Vendor's sole discretion. Notwithstanding any assignment, the Purchaser shall not be released or relieved from any of its obligations hereunder until Closing and shall be jointly and severally liable with the assignee hereunder until Closing.

9.18 Notice

Any notice, demand, approval, consent, information, agreement, offer, request or other communication (a "Notice") to be given under or in connection with this Agreement shall be in writing and shall be given by personal delivery during regular business hours on any Business Day or by telecopier, facsimile transmission or other electronic communication which results in a written or printed notice being given, addressed or sent as set out below or to such other address or electronic number as may from time to time be the subject of a Notice:

- (a) Vendor: RSM Canada Limited.
11 King Street West, Suite 700
Toronto, ON M5H 4C7
- Attention: Bryan A. Tannenbaum and Daniel Weisz
Facsimile: 416-480-2646
Email: bryan.tannenbaum@rsmcanada.com and
daniel.weisz@rsmcanada.com

with a copy to the Vendor's Solicitors:

Garfinkle Biderman LLP
1 Adelaide Street East, Suite 801

Toronto, ON M5C 2V9

Attention: Avrom Brown and Wendy Greenspoon
Facsimile: (416) 869.0547
Email: abrown@garfinkle.com and
wgreenspoon@garfinkle.com

(b) Purchaser: SC Land Inc.
1090 Mills Road, Suite 300
Toronto, ON M3C 3R6

Attention: Morris Kansun
Facsimile: 416-642-0150
Email: morris@sierra.ca

with a copy to the Purchaser's Solicitors:

Harris, Sheaffer LLP
4100 Yonge Street, Suite 610
Toronto, ON M2P 2B5

Fax: 416.250.5300
Attention: Robert D. Sheaffer
Email: rsheaffer@harris-sheaffer.com

Any Notice, if personally delivered, shall be deemed to have been validly and effectively given and received on the date of such delivery and if sent by telecopier, facsimile transmission or other electronic communication with confirmation of transmission prior to 5:00 p.m. (Toronto time), shall be deemed to have been validly and effectively given and received on the Business Day it was sent unless the confirmation of transmission was after 5:00 p.m. (Toronto time) in which case it shall be deemed to have been received on the next following Business Day.

9.19 Effect of Termination of Agreement

Notwithstanding the termination of this Agreement for any reason, the confidentiality provisions contained in Section 2.4, the Expense Reimbursement provisions contained in Section 8.2 and all other provisions that state they survive termination shall survive termination and shall remain in full force and effect.

9.20 Planning Act of Ontario

This Agreement and the transactions reflected herein are subject to compliance with the *Planning Act* (Ontario).

9.21 No Registration of Agreement

The Purchaser covenants and agrees not to register this Agreement or any notice of this Agreement on title to the Lands or any part thereof or interest therein.

9.22 Announcements

Except as otherwise required by Applicable Laws or a Governmental Authority, or as may be required in connection with the Receivership Proceeding or Sale Procedure, no press release or public announcement with respect to this Agreement or the Transaction may be made except with the prior written consent and joint approval of the Vendor and the Purchaser. Where the public disclosure is required by Applicable Laws, a Governmental Authority or in connection with the Receivership Proceeding, the Party required to make the public disclosure will use its reasonable commercial efforts to obtain the approval of the other Party as to the form, nature and extent of the disclosure.

9.23 Commissions

The Purchaser is solely responsible to pay all other fees and/or commissions claimed and/or otherwise owing to any other Person with whom the Purchaser had any communications and/or dealings in respect of the Subject Assets and the Purchaser shall indemnify and save the Vendor harmless from all Claims with respect to same. This Section shall survive and not merge on Closing.

9.24 No Personal Liability of the Vendor

The Vendor is executing this Agreement solely in its capacity as Court-appointed receiver and manager of the of the lands and premises municipally known as 110 Avenue Road, Toronto, Ontario, 112 Avenue Road, Toronto, Ontario, 114 Avenue Road, Toronto, Ontario and 116 Avenue Road, Toronto, Ontario, and not in its personal or corporate capacity and neither the Vendor nor its directors, officers, agents, representatives, servants or employees shall have any personal or corporate liability hereunder or at common law, or by statute, or equity or otherwise as a result hereof.

9.25 Counterparts; Electronic Transmission

This Agreement may be executed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same instrument. The Parties agree that this Agreement may be transmitted by telecopier or electronic transmission via email and that the reproduction of signatures by way of telecopier or electronic transmission via email will be treated as though such reproduction were executed originals and each Party, if required by the other Party, undertakes to provide the other with a copy of this Agreement bearing original signatures within a reasonable time after the date of execution.

[Signature page follows]

IN WITNESS WHEREOF the Vendor and Purchaser have executed this Agreement as of the Execution Date.

RSM CANADA LIMITED, solely in its capacity as court-appointed receiver and manager of the lands and premises municipally known as 110 Avenue Road, Toronto, Ontario, 112 Avenue Road, Toronto, Ontario, 114 Avenue Road, Toronto, Ontario and 116 Avenue Road, Toronto, Ontario, and not in its personal capacity and without personal or corporate liability

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the Corporation.

SC LAND INC.

By:  _____
Name: Catherine Allen of Teplitsky,
Colson LLP, as counsel for SC Land Inc.

I/We have authority to bind the Corporation.

SCHEDULE A**LANDS****PIN No. 21214-0194 (LT) – 110 Avenue Road**

Part Lot 3 Plan 742 City East as in EM50567; Toronto

PIN No. 21214-0195 (LT) – 112 Avenue Road

Part Lot 3-4 Plan 742 City East as in CA739828; Toronto

PIN No. 21214-0196 (LT) – 114 Avenue Road

Part Lot 4 Plan 742 City East as in CT963202; Toronto

PIN No. 21214-0221 (LT) – 116 Avenue Road

Lot 1 Plan 639 City East S/T & T/W CA628958; Toronto

SCHEDULE B**PERMITTED ENCUMBRANCES**

1. Encumbrances for real property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and municipal utilities in connection with the Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for pursuant to this agreement.
2. Any deficiencies, encroachments, zoning by-law violations and other matters that might be revealed by an up-to-date plan of survey of the Property.
3. The reservations, limitations, provisos and conditions, if any, expressed in the original grant from the Crown, in right of Canada or a Province thereof.
4. Any rights of expropriation, access or use, or any other right conferred or reserved by or in any statute of Canada or the Province of Ontario or in any other governmental authority.
5. All applicable municipal, provincial or federal statutes, by-laws, regulations or ordinances (including all building and zoning by-laws and regulations).
6. Any easements and/or agreements relating to drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services, provided: (i) they do not materially and adversely affect the ordinary use or operation, or value, of the Property; and (ii) they have been complied with by the Vendor in all material respects.
7. Minor encumbrances or defects in title which do not, individually or in the aggregate, materially affect the use, enjoyment or value of the Property or any party thereof.
8. Encumbrances respecting minor encroachments by the Property over neighbouring lands permitted under agreements with the owners of such other lands and minor encroachments over any of the Property by improvements of abutting land owners permitted under agreements with such abutting owners.
9. Undermined or inchoate liens incidental to construction, renovations or current operations against the Property, a claim for which shall not at the time have been registered against the Property or of which notice in writing shall not at the time have been given to the Vendor pursuant to the *Construction Act* (Ontario).
10. The specific encumbrances, excluding any mortgages or charges, listed on the parcel registers for the Property as of the date of this Agreement.

SCHEDULE C
EXCLUDED ASSETS

None

Sale Procedure

Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated September 11, 2020 (the “**Appointment Order**”), RSM Canada Limited (the “**Receiver**”) was appointed receiver and manager, without security, of the lands and premises municipally known as 110 Avenue Road, Toronto, Ontario, 112 Avenue Road, Toronto, Ontario, 114 Avenue Road, Toronto, Ontario and 116 Avenue Road, Toronto, Ontario (collectively, the “**Avenue Road Properties**”) owned by the Debtors and for all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to the Avenue Road Properties, including all proceeds thereof.

On October 14, 2020, the Court made an order (the “**Sale Procedure Order**”) among other things, approving (a) the Receiver entering into an asset purchase agreement, dated October 9, 2020, as may in the future be supplemented, amended or restated from time to time (the “**Stalking Horse Agreement**”), relating to the Avenue Road Properties with SC Land Inc. as purchaser (the “**Stalking Horse Bidder**”) so as to set a minimum floor price in respect of the Receiver's sales process; and (b) this Sale Procedure for the solicitation of offers or proposals (each a “**Bid**”) for the acquisition of the Avenue Road Properties.

Accordingly, the following Sale Procedure shall govern the proposed sale of all of the Avenue Road Properties pursuant to one or more Bids. This Sale Procedure shall govern the sales process relating to the solicitation by the Receiver of one or more Bids for the Avenue Road Properties that are superior to that contemplated by the Stalking Horse Agreement.

All denominations are in Canadian Dollars.

1. Definitions

Capitalized terms used in this Sale Procedure shall have the definitions given to them in the preamble hereto and as follows:

“**Acknowledgement of Sale Procedure**” means an acknowledgement of the Sale Procedure in the form attached as **Schedule A** hereto;

“**Back-up Bid**” means the next highest and/or best Qualified Bid after the Successful Bid, as assessed by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including those factors affecting the speed and certainty of consummating the proposed sale;

“**Back-up Bidder**” means the Bidder that submits the Back-up Bid;

“**Bid**” means a Bid submitted by a Bidder pursuant to Section 7 hereof;

"Bid Deadline" means 3 p.m. (Toronto time) on November 24, 2020;

"Bidder" means a party that submits a Bid in accordance with Section 8;

"Confidential Data Room" means a private data room prepared and maintained by the Receiver or the Listing Agent containing confidential information in respect of or related to the Avenue Road Properties;

"Confidential Information" means the confidential information in the Confidential Data Room;

"Confidential Information Memorandum" means a confidential information memorandum prepared by the Receiver or the Listing Agent providing certain confidential information in respect of or related to the Avenue Road Properties;

"Confidentiality Agreement" means an executed confidentiality agreement in form and substance acceptable to the Receiver and its counsel Paliare Roland Rosenberg Rothstein LLP;

"Debtors" means, collectively, Yorkville Central Investments Inc., Yorkville Central 2 Investments Inc., and Yorkville Central 3 Investments Inc.;

"Encumbrances" means, collectively, all pledges, liens, security interests, encumbrances, claims, charges, options, and interests;

"Expense Reimbursement" means as defined in Section 13 below;

"Good Faith Deposit" means a cash deposit equal to \$1,000,000 under the applicable Modified APA;

"Interested Party" means a party participating in this Sale Procedure;

"Listing Agent" means Colliers International in its capacity as marketing and listing agent to the Receiver pursuant to an engagement agreement dated on or after October 14, 2020;

"Modified APA" means an executed agreement of purchase and sale in a form to be provided by the Vendor and mark-up to reflect the Bidder's proposed changes to such agreement;

"Notice Parties" means the Receiver, its counsel Paliare Roland Rosenberg Rothstein LLP, and the Listing Agent;

"Participant Requirements" has the meaning set out in Section 4 hereof;

"Permitted Encumbrances" means the encumbrances set out in Schedule "B" of the Stalking Horse Agreement;

"Qualified Bid" means a Bid that satisfies the conditions set out in Section 7 hereof as determined by the Receiver;

"Qualified Bidder" means a Bidder submitting a Qualified Bid. The Stalking Horse Bidder is deemed to be a Qualified Bidder;

"Sale Hearing" means a Court hearing on motion by the Receiver for an Order to approve the sale of the Avenue Road Properties to the Successful Bidder;

"Stalking Horse Purchase Price" means \$16,100,000 (Sixteen million, one hundred thousand dollars);

"Successful Bid" means the highest and best Qualified Bid as determined by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including the Expense Reimbursement, if applicable, and those factors affecting the speed and certainty of consummating the proposed sale; and

"Successful Bidder" means the Bidder that submits the Successful Bid.

2. Assets for Sale

The Receiver is soliciting superior offers for all of and not less than all of the right, title and interest of the Receiver and the Debtors in and to the Avenue Road Properties.

For the purposes of this Sale Procedure, Bids may be submitted only for the entire property comprising the Avenue Road Properties.

3. Sale Procedure Structure and Bidding Deadlines

Interested Parties that meet the Participant Requirements shall be provided the Confidential Information Memorandum and be given access to the Confidential Information in the Confidential Data Room.

The Receiver will be engaging the Listing Agent as marketing and listing agent to assist the Receiver with the implementation of the Sale Procedure. Interested Parties wishing to obtain information about the Sale Procedure, a copy of the Confidentiality Agreement and information in connection with their due diligence, should contact the Listing Agent, Attn. Steve Keyzer (steve.keyzer@colliers.com) and Ian Gragtmans (ian.gragtmans@colliers.com) with a copy to the Receiver c/o Attn. Jeff Berger (jeff.berger@rsmcanada.com).

All Bids must be submitted to the Notice Parties by email in accordance with the terms of this Sale Procedure so that they are actually received by each of the Notice Parties no later than the Bid Deadline.

A Bid received after the Bid Deadline shall not constitute a Bid and shall be disqualified. A Bid shall be delivered to all Notice Parties at the same time.

4. Participant Requirements

To participate in the Sale Procedure and to otherwise be considered for any purpose hereunder, each Interested Party must provide the Receiver with each of the following prior to being provided with the Confidential Information Memorandum and access to the Confidential Information: (i) an executed Confidentiality Agreement; and (ii) an executed Acknowledgement of Sale Procedure (collectively, the "**Participant Requirements**").

5. Access to Due Diligence Materials

Only Interested Parties that satisfy the Participant Requirements ("**Potential Bidders**") will be eligible to receive the Confidential Information Memorandum and access to the Confidential Information.

The Receiver and the Listing Agent will be responsible for the coordination of all reasonable requests for additional information and due diligence access from Potential Bidders. Neither the Receiver nor the Listing Agent shall be obligated to furnish any due diligence information after the Bid Deadline. Neither the Receiver nor the Listing Agent shall be responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Avenue Road Properties.

6. Information from Interested Parties

Each Potential Bidder shall comply with all reasonable requests for additional information by the Receiver and/or the Listing Agent regarding such Potential Bidder and its contemplated transaction. Failure by a Potential Bidder to comply with requests for additional information will be a basis for the Receiver to determine that the Potential Bidder is not a Qualified Bidder.

7. Bid Requirements

In order to be considered a Qualified Bid, as determined by the Receiver, a Bid must satisfy each of the following conditions:

- (a) Written Submission of Modified APA. They must be submitted by the Bid Deadline in the form of a Modified APA (together with a blackline of the Modified APA against the Stalking Horse Agreement), which must

constitute a written and binding commitment to close on the terms and conditions set forth therein;

- (b) Irrevocable. A Bid must be received by the Bid-Deadline, in accordance with Section 3 above, and must be irrevocable until the date on which the Receiver obtains court approval of the Successful Bid, subject to the provisions hereof regarding the Back-up Bid being deemed to be the Successful Bid;
- (c) Conditions. A Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other terms and conditions associated with a Bid may not, in aggregate, be more burdensome than those set forth in the Stalking Horse Agreement;
- (d) Financing Sources. A Bid must be accompanied by written evidence of a commitment for financing or other evidence of the ability to consummate the transaction satisfactory to the Receiver and appropriate contact information for such financing sources must be provided;
- (e) No Fees payable to Qualified Bidder. A Bid may not request or entitle the Qualified Bidder to any break fee, expense reimbursement or similar type of payment, subject to Section 13;
- (f) Good-Faith Deposit. Each Bid must be accompanied by a Good Faith Deposit that shall be paid to the Receiver's counsel by wire transfer or banker's draft, to be held by the Receiver's counsel in trust in accordance with this Sale Procedure and which shall constitute the Deposit under the Modified APA; and
- (g) Purchase Price. The purchase price in a Bid must be in accordance with Section 11 below.

The Receiver shall be entitled to seek additional information and clarifications from Bidders in respect of their Bids at any time.

8. Furthers Bid by the Stalking Horse Bidder

The Stalking Horse Bidder, or a person related thereto, shall be entitled to make a Bid.

9. Designation as Qualified Bidder

Following the Bid Deadline, the Receiver shall determine which Bidders are Qualified Bidders. The Receiver shall notify each Bidder of its determination as to whether the Bidder is a Qualified Bidder as soon as practicable after the Bid Deadline.

For greater certainty, the Stalking Horse Bidder is and is deemed to be a Qualified Bidder for all purposes of this Sale Procedure.

10. Determination of Successful Bid

If one or more Qualified Bids (in addition to the Stalking Horse Bid) is received by the Bid Deadline the Receiver shall, by December 4, 2020: (i) conduct an auction amongst the Qualified Bidders, on terms to be determined by the Receiver and communicated to the Qualified Bidders; and/or (ii) otherwise negotiate with the Qualified Bidders to determine the Successful Bid and the Back-up Bid, if any.

Upon determination of the Successful Bid and the Back-up Bid, if any, the Receiver shall as soon as reasonably practicable seek approval of, and authority to consummate, the Successful Bid and the transactions provided for therein at the Sale Hearing and the Receiver shall post notice of its application to Court for approval of the Successful Bid on its website established in connection with the Receivership Proceeding.

If no Qualified Bid other than the Stalking Horse Bid is received by the Bid Deadline, then the Sale Procedure shall be terminated and the Stalking Horse Bidder shall be declared the Successful Bidder. If the Stalking Horse Bidder is declared the Successful Bidder, the Receiver shall as soon as reasonably practicable seek approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein at the Sale Hearing and the Receiver shall post notice of its application to Court for approval of the Stalking Horse Bid on its website established in connection with the Receivership Proceeding.

11. Minimum Purchase Price for Bids

The minimum purchase price of any Bid must be the sum of the Stalking Horse Purchase Price plus the Expense Reimbursement plus \$125,000.

12. Acceptance of Successful Bid

The Receiver shall complete the sale transaction with the Successful Bidder following approval of the Successful Bid by the Court. The Receiver will be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by the Court. The Receiver will be deemed to have accepted a Back-up Bid only when it has been approved by the Court and has been deemed to be a Successful Bid.

13. Expense Reimbursement

In consideration for the Stalking Horse Bidder's expenditure of time and money in acting as the initial bidder in this Sale Procedure and the preparation and negotiation of the Stalking Horse Agreement and subject to the terms and conditions of that agreement and of the Sale Procedure Order, upon termination of the Stalking Horse Agreement by the

Receiver or the closing of a sale and a transfer of the Avenue Road Properties to one or more parties other than the Stalking Horse Bidder or a person related thereto (an “**Alternative Transaction**”), the Receiver agrees to reimburse the Stalking Horse Bidder for its expenses in connection with this transaction (the “**Expense Reimbursement**”) in an amount of \$385,000.00 from the proceeds of an Alternative Transaction. Payment of the Expense Reimbursement shall be made by the Receiver to the Applicant upon consummation of the Alternative Transaction. Upon payment of the Expense Reimbursement to the Stalking Horse Bidder, the Stalking Horse Bidder and the Receiver shall have no further obligations under the Stalking Horse Agreement. For greater certainty, the Stalking Horse Bidder shall not be entitled to the Expense Reimbursement if the Stalking Horse Bidder is the Successful Bidder whether pursuant to the Stalking Horse Agreement or otherwise.

14. "As Is, Where Is"

The sale of the Avenue Road Properties pursuant to this Sale Procedure shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Receiver, the Listing Agent or their respective officers, directors, employees, representatives or agents, except to the extent set forth in the Successful Bid. The Stalking Horse Bidder and each Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Avenue Road Properties prior to making its Bid, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Avenue Road Properties in making its Bid, and that it did not, does not, and will not rely on any written or oral statements, representations, promises, warranties, conditions or guarantees whatsoever, whether express or implied or arising by operation of law or otherwise, regarding the Avenue Road Properties, made by the Receiver, the Listing Agent or their respective officers, directors, employees, representatives or agents or the accuracy or completeness of any information provided in connection therewith, except as expressly stated in this Sale Procedure or in (a) as to the Stalking Horse Bidder, the Stalking Horse Agreement, or (b) as to another Successful Bidder, the applicable Modified APA.

15. Free Of Any And All Encumbrances

Except as otherwise provided in the Successful Bid, the Avenue Road Properties shall be sold free and clear of all Encumbrances, except the Permitted Encumbrances, in accordance with a vesting order of the Court, with all Encumbrances on or against the Avenue Road Properties, other than the Permitted Encumbrances, to attach to the net proceeds of the sale of the Avenue Road Properties after completion of such sale under a Successful Bid.

16. Back-up Bid

If the Successful Bid is approved by the Court and the Successful Bidder fails to consummate the transaction in accordance with the terms and conditions of the Successful

Bid, the Receiver shall be entitled, but not required, to deem the Back-up Bid the Successful Bid and the Receiver shall be authorized, but not required, to consummate the transaction with the Back-up Bidder and upon so doing the Back-up Bidder shall be deemed to be the Successful Bidder, subject to approval by the Court, which approval may be sought by the Receiver on a conditional basis at the Sale Hearing, at the Receiver's discretion.

17. Return of Good Faith Deposit

Good Faith Deposits of all Qualified Bidders shall be held in a non-interest bearing account of the Receiver's counsel. Good Faith Deposits of all Qualified Bidders, other than the Successful Bidder and the Back-up Bidder, shall be returned, without interest, to such Qualified Bidders within three (3) business days after the selection of the Successful Bidder and the Back-up Bidder. Good Faith Deposits of the Successful Bidder shall be applied to the purchase price of such transaction at closing. The Good Faith Deposit of the Back-up Bidder shall be returned, without interest, to the Back-up Bidder within three (3) business days after the closing of the transaction(s) contemplated by the Successful Bid. If a Successful Bidder (including any Back-up Bidder deemed to be a Successful Bidder hereunder) fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of its damages resulting from the breach or failure to perform by the Successful Bidder. If the Successful Bidder fails to consummate an approved sale for any reason, and a transaction is completed with the Back-up Bidder, the Good Faith Deposit of the Back-up Bidder shall be applied to the purchase price of the transaction(s) contemplated by the purchase agreement of the Back-up Bidder at closing.

18. Modifications and Reservations

This Sale Procedure may be modified or amended by the Receiver, provided that if such modification or amendment materially deviates from this Sale Procedure, such modification or amendment may only be made by order of the Court.

Schedule "A"

ACKNOWLEDGMENT

TO: RSM Canada Limited, in its capacity as court-appointed receiver and manager of the lands and premises municipally known as 110 Avenue Road, Toronto, Ontario, 112 Avenue Road, Toronto, Ontario, 114 Avenue Road, Toronto, Ontario and 116 Avenue Road, Toronto, Ontario, (collectively, the "**Avenue Road Properties**") (the "**Receiver**")

RE: The sale procedure with respect to the sale by the Receiver of the Avenue Road Properties, as approved by the Court on October 14, 2020 (the "**Sale Procedure**")

The undersigned hereby acknowledges receipt of, and its agreement with, the Sale Procedure.

DATED this ____ day of _____, 2020.

[●]

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

Court File No. CV-20-00644927-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE)	WEDNESDAY, THE 14 th
)	
JUSTICE CONWAY)	DAY OF OCTOBER, 2020

BETWEEN:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

- and -

YORKVILLE CENTRAL INVESTMENTS INC., YORKVILLE CENTRAL 2
INVESTMENTS INC., YORKVILLE CENTRAL 3 INVESTMENTS INC.

Respondents

SALE PROCEDURE ORDER

THIS MOTION, made by RSM Canada Limited ("**RSM**"), in its capacity as the Court-appointed receiver and manager (the "**Receiver**"), without security, over the lands and premises municipally known as 110 Avenue Road, Toronto, 112 Avenue Road, Toronto, 114 Avenue Road, Toronto, and 116 Avenue Road, Toronto (the "**Properties**") owned by Yorkville Central Investments Inc., Yorkville Central 2 Investments Inc. and Yorkville Central 3 Investments Inc. (the "**Debtors**"), and for all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to the Properties, including all proceeds thereof (together with the Properties, hereinafter collectively referred to as the "**Property**") seeking among other relief, an Order approving a sale procedure, was heard this day by videoconference due to the COVID-19 crisis.

ON READING the First Report of the Receiver, dated September 25, 2020 (the “**First Report**”), the Supplemental Report of the Receiver, dated October 2, 2020 (the “**Supplemental Report**”), and the Second Report of the Receiver, dated October 9, 2020 (the “**Second Report**”), and on hearing the submissions of counsel for the Receiver and such other counsel as were present as indicated on the Counsel Slip, no one appearing for any other person on the Service List, although properly served as appears from the Affidavit of Michelle Jackson sworn _____, 2020, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion and the Motion Record is hereby dispensed with.

APPROVAL OF SALE PROCEDURE AND LISTING AGREEMENT

2. **THIS COURT ORDERS** that the Receiver’s retention of Colliers International (“**Colliers**”) as the listing agent for the Properties (the “**Colliers Listing Agreement**”) be and is hereby approved.

3. **THIS COURT ORDERS** that the sale procedure substantially in the form of the Sale Procedure included as Appendix “G” to the Second Report (the “**Sale Procedure**”), as described in the Second Report, be and hereby is approved.

4. **THIS COURT ORDERS** that the Receiver is authorized to enter into the asset purchase agreement with SC Land Inc., as attached as Appendix “F” to the Second Report and as may in the future be supplemented, amended or restated from time to time (the “**Stalking Horse Agreement**”), in respect of the Properties.

5. **THIS COURT ORDERS** that the Receiver is hereby authorized to commence and carry out the Sale Procedure and to take such further steps as are considered necessary or desirable in carrying out the terms of the Sale Procedure, subject to prior approval of this Court being obtained before completion of any transactions under the Sale Procedure.

6. **THIS COURT ORDERS** that the Receiver and its respective affiliates, partners, directors, officers, employees, representatives and agents shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Sale Procedure, except to the extent such losses, claims, damages or liabilities result from gross negligence or wilful misconduct of the Receiver in performing its obligations under the Sale Procedure as determined by this Court.

APPROVAL OF RECEIVER'S REPORTS AND CONDUCT

7. **THIS COURT ORDERS** that the First Report, the Supplemental Report, the Second Report and the conduct and activities of the Receiver, as described therein, be and hereby are approved.

SEALING OF CONFIDENTIAL APPENDIX

8. **THIS COURT ORDERS** that Confidential Appendix "H" to the Second Report and the Colliers Listing Agreement, filed, be and hereby are sealed.

GENERAL

9. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions on the discharge of its duties and powers hereunder.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

CAMERON STEPHENS MORTGAGE CAPITAL LTD.
Applicant

-and-

Court File No. CV-20-00644927-00CL
YORKVILLE CENTRAL INVESTMENTS INC. et al.
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

SALE PROCEDURE ORDER

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

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Lawyers for the Receiver

Court File No. CV-20-00644927-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	WEEKDAY, THE #
)	
JUSTICE)	DAY OF MONTH, 20YR

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

- and -

YORKVILLE CENTRAL INVESTMENTS INC., YORKVILLE CENTRAL 2
INVESTMENTS INC., YORKVILLE CENTRAL 3 INVESTMENTS INC.

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by RSM Canada Limited, in its capacity as the Court-appointed receiver and manager (the "Receiver") over the lands and premises municipally known as 110 Avenue Road, Toronto, 112 Avenue Road, Toronto, 114 Avenue Road, Toronto and 116 Avenue Road, Toronto owned by Yorkville Central Investments Inc., Yorkville Central 2 Investments Inc., and Yorkville Central 3 Investments Inc. (collectively, the "Debtors"), for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and [NAME OF PURCHASER] (the "Purchaser") dated [DATE] and appended to the Report of the Receiver dated [DATE] (the "Report"), and vesting in the Purchaser the Debtors' right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day by videoconference due to the COVID-19 crisis.

ON READING the Report and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE], filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtors' right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice [NAME] dated [DATE]; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Toronto (#66) of an Application for Vesting Order in the form

prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser information in the Company's records. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtors.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors or any of them and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of each of the Debtors;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of each of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-20-00644927-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

- and –

YORKVILLE CENTRAL INVESTMENTS INC., YORKVILLE CENTRAL 2
INVESTMENTS INC., YORKVILLE CENTRAL 3 INVESTMENTS INC.

Respondents

RECEIVER’S CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable Madam Justice Dietrich of the Ontario Superior Court of Justice (the "Court") dated September 11, 2020, RSM Canada Limited (the "Receiver") was appointed as receiver and manager over the lands and premises municipally known as 110 Avenue Road, Toronto, 112 Avenue Road, Toronto, 114 Avenue Road, Toronto and 116 Avenue Road, Toronto (collectively the "Properties") owned by Yorkville Central Investments Inc., Yorkville Central 2 Investments Inc., and Yorkville Central 3 Investments Inc. (collectively, the "Debtors"), and for all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to the Properties, including all proceeds thereof.

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "Sale Agreement") between the Receiver and [NAME OF PURCHASER] (the "Purchaser") and provided for the vesting in the Purchaser of the Debtors' right, title and interest in and to

the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section ● of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section ● of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

RSM Canada Limited, solely in its capacity as Court-appointed receiver and manager of the lands and premises municipally known as 110 Avenue Road, Toronto, 112 Avenue Road, Toronto, 114 Avenue Road, Toronto and 116 Avenue Road, Toronto and not in its personal capacity and without personal or corporate liability

Per: _____
 Name:
 Title:

Schedule B – Purchased Assets

All of the Receiver's (if any) and the Debtors' right, title and interest in and to the Subject Assets (as defined in the Sale Agreement) including, without limitation, the following real property:

PIN No. 21214-0194 (LT) – 110 Avenue Road

Part Lot 3 Plan 742 City East as in EM50567; Toronto

PIN No. 21214-0195 (LT) – 112 Avenue Road

Part Lot 3-4 Plan 742 City East as in CA739828; Toronto

PIN No. 21214-0196 (LT) – 114 Avenue Road

Part Lot 4 Plan 742 City East as in CT963202; Toronto

PIN No. 21214-0221 (LT) – 116 Avenue Road

Lot 1 Plan 639 City East S/T & T/W CA628958; Toronto

Schedule C – Claims to be deleted and expunged from Title

The following Instruments are to be discharged upon registration of the Vesting Order:

1. Instrument No. AT4748471 is a Charge registered on December 1, 2017 in favour of Cameron Stephens Mortgage Capital Ltd. ("**Cameron**") in the amount of \$11,800,000.00.
2. Instrument No. AT4748472 is a General Assignment of Rents registered on December 1, 2017 in favour of Cameron as collateral security to the Charge registered as Instrument No. AT4748471.
3. Instrument No. AT5022192 is a Charge registered on December 3, 2018 in favour of GC Capital Inc. in the amount of \$5,000,000.00.
4. Instrument No. AT5022193 is a General Assignment of Rents registered on December 3, 2018 in favour of GC Capital Inc. as collateral security to the Charge registered as Instrument No. AT5022192.
5. Instrument No. AT5461718 is a Certificate of Pending Litigation registered on June 26, 2020 in favour of SC Land Inc. against Yorkville Central 3 Investments Inc., Yorkville Central 2 Investments Inc., and Yorkville Central Investments Inc.
6. Instrument No. AT5462671 is a Certificate of Pending Litigation registered on June 29, 2020 in favour of SC Land Inc. against Yorkville Central 3 Investments Inc., Yorkville Central 2 Investments Inc., and Yorkville Central Investments Inc.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
on Title**

(unaffected by the Vesting Order)

Permitted Encumbrances with respect to Title means:

1. Encumbrances for real property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and municipal utilities in connection with the Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for pursuant to this agreement.
2. Any deficiencies, encroachments, zoning by-law violations and other matters that might be revealed by an up-to-date plan of survey of the Property.
3. The reservations, limitations, provisos and conditions, if any, expressed in the original grant from the Crown, in right of Canada or a Province thereof.
4. Any rights of expropriation, access or use, or any other right conferred or reserved by or in any statute of Canada or the Province of Ontario or in any other governmental authority.
5. All applicable municipal, provincial or federal statutes, by-laws, regulations or ordinances (including all building and zoning by-laws and regulations).
6. Any easements and/or agreements relating to drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services, provided: (i) they do not materially and adversely affect the ordinary use or operation, or value, of the Property; and (ii) they have been complied with by the Vendor in all material respects.
7. Minor encumbrances or defects in title which do not, individually or in the aggregate, materially affect the use, enjoyment or value of the Property or any party thereof.
8. Encumbrances respecting minor encroachments by the Property over neighbouring lands permitted under agreements with the owners of such other lands and minor encroachments over any of the Property by improvements of abutting land owners permitted under agreements with such abutting owners.
9. Undermined or inchoate liens incidental to construction, renovations or current operations against the Property, a claim for which shall not at the time have been registered against the Property or of which notice in writing shall not at the time have been given to the Vendor pursuant to the *Construction Act* (Ontario).
10. The specific encumbrances, excluding any mortgages or charges, listed on the parcel registers for the Property as of the date of this Agreement.
11. The following instruments registered on title to the Real Property:

Instrument No. AT4748470 is a Transfer from Aitco Limited and Michele Atlin to Yorkville Central 3 Investments Inc. registered December 1, 2017.

Instrument No. AT4615549 is a Transfer from Red Brick Properties Inc. to Yorkville Central 2 Investments Inc. registered June 30, 2017.

Instrument No. AT4529868 is a Transfer from Rachel Karniol and Barbara Mary Farkas to Yorkville Central Investments Inc. registered April 4, 2017.

CAMERON STEPHENS MORTGAGE CAPITAL LTD.
Applicant

-and-

Court File No. CV-20-00644927-00CL
YORKVILLE CENTRAL INVESTMENTS INC. et al.
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

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Lawyers for the Receiver

APPENDIX "G"

Sale Procedure

Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated September 11, 2020 (the “**Appointment Order**”), RSM Canada Limited (the “**Receiver**”) was appointed receiver and manager, without security, of the lands and premises municipally known as 110 Avenue Road, Toronto, Ontario, 112 Avenue Road, Toronto, Ontario, 114 Avenue Road, Toronto, Ontario and 116 Avenue Road, Toronto, Ontario (collectively, the “**Avenue Road Properties**”) owned by the Debtors and for all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to the Avenue Road Properties, including all proceeds thereof.

On October 14, 2020, the Court made an order (the “**Sale Procedure Order**”) among other things, approving (a) the Receiver entering into an asset purchase agreement, dated October 9, 2020, as may in the future be supplemented, amended or restated from time to time (the “**Stalking Horse Agreement**”), relating to the Avenue Road Properties with SC Land Inc. as purchaser (the “**Stalking Horse Bidder**”) so as to set a minimum floor price in respect of the Receiver's sales process; and (b) this Sale Procedure for the solicitation of offers or proposals (each a “**Bid**”) for the acquisition of the Avenue Road Properties.

Accordingly, the following Sale Procedure shall govern the proposed sale of all of the Avenue Road Properties pursuant to one or more Bids. This Sale Procedure shall govern the sales process relating to the solicitation by the Receiver of one or more Bids for the Avenue Road Properties that are superior to that contemplated by the Stalking Horse Agreement.

All denominations are in Canadian Dollars.

1. Definitions

Capitalized terms used in this Sale Procedure shall have the definitions given to them in the preamble hereto and as follows:

“**Acknowledgement of Sale Procedure**” means an acknowledgement of the Sale Procedure in the form attached as **Schedule A** hereto;

“**Back-up Bid**” means the next highest and/or best Qualified Bid after the Successful Bid, as assessed by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including those factors affecting the speed and certainty of consummating the proposed sale;

“**Back-up Bidder**” means the Bidder that submits the Back-up Bid;

“**Bid**” means a Bid submitted by a Bidder pursuant to Section 7 hereof;

"Bid Deadline" means 3 p.m. (Toronto time) on November 24, 2020;

"Bidder" means a party that submits a Bid in accordance with Section 8;

"Confidential Data Room" means a private data room prepared and maintained by the Receiver or the Listing Agent containing confidential information in respect of or related to the Avenue Road Properties;

"Confidential Information" means the confidential information in the Confidential Data Room;

"Confidential Information Memorandum" means a confidential information memorandum prepared by the Receiver or the Listing Agent providing certain confidential information in respect of or related to the Avenue Road Properties;

"Confidentiality Agreement" means an executed confidentiality agreement in form and substance acceptable to the Receiver and its counsel Paliare Roland Rosenberg Rothstein LLP;

"Debtors" means, collectively, Yorkville Central Investments Inc., Yorkville Central 2 Investments Inc., and Yorkville Central 3 Investments Inc.;

"Encumbrances" means, collectively, all pledges, liens, security interests, encumbrances, claims, charges, options, and interests;

"Expense Reimbursement" means as defined in Section 13 below;

"Good Faith Deposit" means a cash deposit equal to \$1,000,000 under the applicable Modified APA;

"Interested Party" means a party participating in this Sale Procedure;

"Listing Agent" means Colliers International in its capacity as marketing and listing agent to the Receiver pursuant to an engagement agreement dated on or after October 14, 2020;

"Modified APA" means an executed agreement of purchase and sale in a form to be provided by the Vendor and mark-up to reflect the Bidder's proposed changes to such agreement;

"Notice Parties" means the Receiver, its counsel Paliare Roland Rosenberg Rothstein LLP, and the Listing Agent;

"Participant Requirements" has the meaning set out in Section 4 hereof;

"Permitted Encumbrances" means the encumbrances set out in Schedule "B" of the Stalking Horse Agreement;

"Qualified Bid" means a Bid that satisfies the conditions set out in Section 7 hereof as determined by the Receiver;

"Qualified Bidder" means a Bidder submitting a Qualified Bid. The Stalking Horse Bidder is deemed to be a Qualified Bidder;

"Sale Hearing" means a Court hearing on motion by the Receiver for an Order to approve the sale of the Avenue Road Properties to the Successful Bidder;

"Stalking Horse Purchase Price" means \$16,100,000 (Sixteen million, one hundred thousand dollars);

"Successful Bid" means the highest and best Qualified Bid as determined by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including the Expense Reimbursement, if applicable, and those factors affecting the speed and certainty of consummating the proposed sale; and

"Successful Bidder" means the Bidder that submits the Successful Bid.

2. Assets for Sale

The Receiver is soliciting superior offers for all of and not less than all of the right, title and interest of the Receiver and the Debtors in and to the Avenue Road Properties.

For the purposes of this Sale Procedure, Bids may be submitted only for the entire property comprising the Avenue Road Properties.

3. Sale Procedure Structure and Bidding Deadlines

Interested Parties that meet the Participant Requirements shall be provided the Confidential Information Memorandum and be given access to the Confidential Information in the Confidential Data Room.

The Receiver will be engaging the Listing Agent as marketing and listing agent to assist the Receiver with the implementation of the Sale Procedure. Interested Parties wishing to obtain information about the Sale Procedure, a copy of the Confidentiality Agreement and information in connection with their due diligence, should contact the Listing Agent, Attn. Steve Keyzer (steve.keyzer@colliers.com) and Ian Gragtmans (ian.gragtmans@colliers.com) with a copy to the Receiver c/o Attn. Jeff Berger (jeff.berger@rsmcanada.com).

All Bids must be submitted to the Notice Parties by email in accordance with the terms of this Sale Procedure so that they are actually received by each of the Notice Parties no later than the Bid Deadline.

A Bid received after the Bid Deadline shall not constitute a Bid and shall be disqualified. A Bid shall be delivered to all Notice Parties at the same time.

4. Participant Requirements

To participate in the Sale Procedure and to otherwise be considered for any purpose hereunder, each Interested Party must provide the Receiver with each of the following prior to being provided with the Confidential Information Memorandum and access to the Confidential Information: (i) an executed Confidentiality Agreement; and (ii) an executed Acknowledgement of Sale Procedure (collectively, the "**Participant Requirements**").

5. Access to Due Diligence Materials

Only Interested Parties that satisfy the Participant Requirements ("**Potential Bidders**") will be eligible to receive the Confidential Information Memorandum and access to the Confidential Information.

The Receiver and the Listing Agent will be responsible for the coordination of all reasonable requests for additional information and due diligence access from Potential Bidders. Neither the Receiver nor the Listing Agent shall be obligated to furnish any due diligence information after the Bid Deadline. Neither the Receiver nor the Listing Agent shall be responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Avenue Road Properties.

6. Information from Interested Parties

Each Potential Bidder shall comply with all reasonable requests for additional information by the Receiver and/or the Listing Agent regarding such Potential Bidder and its contemplated transaction. Failure by a Potential Bidder to comply with requests for additional information will be a basis for the Receiver to determine that the Potential Bidder is not a Qualified Bidder.

7. Bid Requirements

In order to be considered a Qualified Bid, as determined by the Receiver, a Bid must satisfy each of the following conditions:

- (a) Written Submission of Modified APA. They must be submitted by the Bid Deadline in the form of a Modified APA (together with a blackline of the Modified APA against the Stalking Horse Agreement), which must

constitute a written and binding commitment to close on the terms and conditions set forth therein;

- (b) Irrevocable. A Bid must be received by the Bid-Deadline, in accordance with Section 3 above, and must be irrevocable until the date on which the Receiver obtains court approval of the Successful Bid, subject to the provisions hereof regarding the Back-up Bid being deemed to be the Successful Bid;
- (c) Conditions. A Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other terms and conditions associated with a Bid may not, in aggregate, be more burdensome than those set forth in the Stalking Horse Agreement;
- (d) Financing Sources. A Bid must be accompanied by written evidence of a commitment for financing or other evidence of the ability to consummate the transaction satisfactory to the Receiver and appropriate contact information for such financing sources must be provided;
- (e) No Fees payable to Qualified Bidder. A Bid may not request or entitle the Qualified Bidder to any break fee, expense reimbursement or similar type of payment, subject to Section 13;
- (f) Good-Faith Deposit. Each Bid must be accompanied by a Good Faith Deposit that shall be paid to the Receiver's counsel by wire transfer or banker's draft, to be held by the Receiver's counsel in trust in accordance with this Sale Procedure and which shall constitute the Deposit under the Modified APA; and
- (g) Purchase Price. The purchase price in a Bid must be in accordance with Section 11 below.

The Receiver shall be entitled to seek additional information and clarifications from Bidders in respect of their Bids at any time.

8. Furthers Bid by the Stalking Horse Bidder

The Stalking Horse Bidder, or a person related thereto, shall be entitled to make a Bid.

9. Designation as Qualified Bidder

Following the Bid Deadline, the Receiver shall determine which Bidders are Qualified Bidders. The Receiver shall notify each Bidder of its determination as to whether the Bidder is a Qualified Bidder as soon as practicable after the Bid Deadline.

For greater certainty, the Stalking Horse Bidder is and is deemed to be a Qualified Bidder for all purposes of this Sale Procedure.

10. Determination of Successful Bid

If one or more Qualified Bids (in addition to the Stalking Horse Bid) is received by the Bid Deadline the Receiver shall, by December 4, 2020: (i) conduct an auction amongst the Qualified Bidders, on terms to be determined by the Receiver and communicated to the Qualified Bidders; and/or (ii) otherwise negotiate with the Qualified Bidders to determine the Successful Bid and the Back-up Bid, if any.

Upon determination of the Successful Bid and the Back-up Bid, if any, the Receiver shall as soon as reasonably practicable seek approval of, and authority to consummate, the Successful Bid and the transactions provided for therein at the Sale Hearing and the Receiver shall post notice of its application to Court for approval of the Successful Bid on its website established in connection with the Receivership Proceeding.

If no Qualified Bid other than the Stalking Horse Bid is received by the Bid Deadline, then the Sale Procedure shall be terminated and the Stalking Horse Bidder shall be declared the Successful Bidder. If the Stalking Horse Bidder is declared the Successful Bidder, the Receiver shall as soon as reasonably practicable seek approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein at the Sale Hearing and the Receiver shall post notice of its application to Court for approval of the Stalking Horse Bid on its website established in connection with the Receivership Proceeding.

11. Minimum Purchase Price for Bids

The minimum purchase price of any Bid must be the sum of the Stalking Horse Purchase Price plus the Expense Reimbursement plus \$125,000.

12. Acceptance of Successful Bid

The Receiver shall complete the sale transaction with the Successful Bidder following approval of the Successful Bid by the Court. The Receiver will be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by the Court. The Receiver will be deemed to have accepted a Back-up Bid only when it has been approved by the Court and has been deemed to be a Successful Bid.

13. Expense Reimbursement

In consideration for the Stalking Horse Bidder's expenditure of time and money in acting as the initial bidder in this Sale Procedure and the preparation and negotiation of the Stalking Horse Agreement and subject to the terms and conditions of that agreement and of the Sale Procedure Order, upon termination of the Stalking Horse Agreement by the

Receiver or the closing of a sale and a transfer of the Avenue Road Properties to one or more parties other than the Stalking Horse Bidder or a person related thereto (an “**Alternative Transaction**”), the Receiver agrees to reimburse the Stalking Horse Bidder for its expenses in connection with this transaction (the “**Expense Reimbursement**”) in an amount of \$385,000.00 from the proceeds of an Alternative Transaction. Payment of the Expense Reimbursement shall be made by the Receiver to the Applicant upon consummation of the Alternative Transaction. Upon payment of the Expense Reimbursement to the Stalking Horse Bidder, the Stalking Horse Bidder and the Receiver shall have no further obligations under the Stalking Horse Agreement. For greater certainty, the Stalking Horse Bidder shall not be entitled to the Expense Reimbursement if the Stalking Horse Bidder is the Successful Bidder whether pursuant to the Stalking Horse Agreement or otherwise.

14. "As Is, Where Is"

The sale of the Avenue Road Properties pursuant to this Sale Procedure shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Receiver, the Listing Agent or their respective officers, directors, employees, representatives or agents, except to the extent set forth in the Successful Bid. The Stalking Horse Bidder and each Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Avenue Road Properties prior to making its Bid, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Avenue Road Properties in making its Bid, and that it did not, does not, and will not rely on any written or oral statements, representations, promises, warranties, conditions or guarantees whatsoever, whether express or implied or arising by operation of law or otherwise, regarding the Avenue Road Properties, made by the Receiver, the Listing Agent or their respective officers, directors, employees, representatives or agents or the accuracy or completeness of any information provided in connection therewith, except as expressly stated in this Sale Procedure or in (a) as to the Stalking Horse Bidder, the Stalking Horse Agreement, or (b) as to another Successful Bidder, the applicable Modified APA.

15. Free Of Any And All Encumbrances

Except as otherwise provided in the Successful Bid, the Avenue Road Properties shall be sold free and clear of all Encumbrances, except the Permitted Encumbrances, in accordance with a vesting order of the Court, with all Encumbrances on or against the Avenue Road Properties, other than the Permitted Encumbrances, to attach to the net proceeds of the sale of the Avenue Road Properties after completion of such sale under a Successful Bid.

16. Back-up Bid

If the Successful Bid is approved by the Court and the Successful Bidder fails to consummate the transaction in accordance with the terms and conditions of the Successful

Bid, the Receiver shall be entitled, but not required, to deem the Back-up Bid the Successful Bid and the Receiver shall be authorized, but not required, to consummate the transaction with the Back-up Bidder and upon so doing the Back-up Bidder shall be deemed to be the Successful Bidder, subject to approval by the Court, which approval may be sought by the Receiver on a conditional basis at the Sale Hearing, at the Receiver's discretion.

17. Return of Good Faith Deposit

Good Faith Deposits of all Qualified Bidders shall be held in a non-interest bearing account of the Receiver's counsel. Good Faith Deposits of all Qualified Bidders, other than the Successful Bidder and the Back-up Bidder, shall be returned, without interest, to such Qualified Bidders within three (3) business days after the selection of the Successful Bidder and the Back-up Bidder. Good Faith Deposits of the Successful Bidder shall be applied to the purchase price of such transaction at closing. The Good Faith Deposit of the Back-up Bidder shall be returned, without interest, to the Back-up Bidder within three (3) business days after the closing of the transaction(s) contemplated by the Successful Bid. If a Successful Bidder (including any Back-up Bidder deemed to be a Successful Bidder hereunder) fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of its damages resulting from the breach or failure to perform by the Successful Bidder. If the Successful Bidder fails to consummate an approved sale for any reason, and a transaction is completed with the Back-up Bidder, the Good Faith Deposit of the Back-up Bidder shall be applied to the purchase price of the transaction(s) contemplated by the purchase agreement of the Back-up Bidder at closing.

18. Modifications and Reservations

This Sale Procedure may be modified or amended by the Receiver, provided that if such modification or amendment materially deviates from this Sale Procedure, such modification or amendment may only be made by order of the Court.

Schedule "A"

ACKNOWLEDGMENT

TO: RSM Canada Limited, in its capacity as court-appointed receiver and manager of the lands and premises municipally known as 110 Avenue Road, Toronto, Ontario, 112 Avenue Road, Toronto, Ontario, 114 Avenue Road, Toronto, Ontario and 116 Avenue Road, Toronto, Ontario, (collectively, the "**Avenue Road Properties**") (the "**Receiver**")

RE: The sale procedure with respect to the sale by the Receiver of the Avenue Road Properties, as approved by the Court on October 14, 2020 (the "**Sale Procedure**")

The undersigned hereby acknowledges receipt of, and its agreement with, the Sale Procedure.

DATED this ____ day of _____, 2020.

[●]

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

CONFIDENTIAL APPENDIX H
to the Second Report of the Receiver
dated October 9, 2020
(filed under seal)